S. Hrg. 100–643

WATER RESOURCES DEVELOPMENT ACT OF 1988

HEARINGS

BEFORE THE

SUBCOMMITTEE ON WATER RESOURCES, TRANSPORTATION, AND INFRASTRUCTURE

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 2100 and S. 2101

BILLS AUTHORIZING THE SECRETARY OF THE ARMY (CORPS OF ENGINEERS) TO CONSTRUCT VARIOUS PROJECTS FOR IMPROVEMENTS TO RIVERS AND HARBORS OF THE UNITED STATES

MARCH 16 AND 17, 1988

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WATER RESOURCES DEVELOPMENT ACT OF 1988

WEDNESDAY, MARCH 16, 1988

U.S. Senate,
Committee on Environment and Public Works,
Subcommittee on Water Resources,
Transportation, and Infrastructure,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:09 a.m., in Room 406, Dirksen Senate Office Building, Hon. Daniel P. Moynihan (chairman of the subcommittee) presiding.

Present: Senators Moynihan, Burdick, Symms, Durenberger, Warner, and Pressler.

OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, U.S. SENATOR FROM THE STATE OF NEW YORK

Senator Moynihan. A very good morning to our guests. I am sorry for the delay in starting, we try not to if we can.

This is a meeting of the Subcommittee on Water Resources, Transportation, and Infrastructure. At the beginning of this Congress we reorganized ourselves and basically reconstituted the old and honorable Committee on Public Works as the Subcommittee on Water Resources, Transportation, and Infrastructure.

We are here to listen to the Honorable Robert Page—Mr. Secretary, we welcome you this morning—on both S. 2100, which is the committee's bill, and S. 2101, which is the administration bill.

General, we welcome you, and we welcome, Mr. Page, your associates.

I have a statement I will put in the record.

[Senator Moynihan's statement follows:]

Opening Statement of Hon. Daniel Patrick Moynihan, U.S. Senator From the State of New York

Good morning. I would like to welcome you to this hearing of the Subcommittee or Water Resources, Transportation, and Infrastructure. Today we will hear testimony on the two versions of the Water Resources Development Act of 1988, S. 2100, which I introduced with the cosponsorship of Chairman Burdick, Senator Stafford, and Senator Symms, and S. 2101, introduced by Senator Stafford at the Administration's request.

It is notable that these bills are modest in scope, propose no major policy changes, and are essentially non-controversial in nature. This is intentional, as the primary purpose of this legislation is to initiate a regular process of water resource authorizations so that justifiable projects can move forward without unnecessary delay.

The enactment of the Water Resources Development Act of 1986 established a working partnership between the federal government and the non-federal interests, be they states, localities, ports, or commercial navigation companies. It initiated a system of cost-sharing as well as national and local user fees, guaranteeing that non-federal interests would have a share in planning, financing, and maintaining water projects.

It also cleared up a backlog of more than 600 projects and related provisions which had built up over seventeen years of Congressional water policy deadlock.

It is not the purpose of the legislation before us today to reopen issues which were resolved only a little more than a year ago. In fact, our purpose is to build upon that legislation and to assure that we do not proceed another seventeen years before projects are again authorized.

The only new projects which were unconditionally authorized in the Water Resources Development Act of 1986 were those which had survived an extensive process of economic and environmental review conducted by the Army Corps of Engineers. Those that had not completed that review, and obtained the approval of the Chief of Engineers, were only authorized subject to the subsequent approval of the Assistant Secretary of the Army for Civil Works.

S. 2100 follows that precedent. Only projects which have been approved by the Chief of Engineers are included.

I am looking forward to the testimony of Assistant Secretary of the Army for Civil Works Robert W. Page in his first appearance before this subcommittee. I have included a provision in S. 2100 directing the General Accounting Office (GAO) to conduct a management and administrative review of the Corps' civil works program. I am sure Secretary Page is thinking along similar lines as he takes on his new responsibilities and faces the challenges presented in implementing the reforms mandated last year. But it has been thirteen years since this Committee has conducted serious oversight hearings on the Corps civil works program; much too long (and much needed) in the new environment of local cost-sharing and participation.

We will also hear today from Administrator James L. Emery, of the Saint Lawrence Seaway Development Corporation, along with a panel of witnesses to discuss the Corporation's financing.

The enabling legislation that created the Corporation in 1954 provided that tolls collected for passage through the U.S. portion of the Seaway would be retained by the Corporation to cover the cost of annual operations. In the Water Resources Development Act of 1986 the Congress, in measures reported by the Senate Finance and House Ways and Means Committees, placed a new ad valorum tax on all commercial cargo moved through U.S. ports. To protect commercial shippers on the Seaway from paying both this fee and the Seaway toll, the final legislation established a mechanism which rebated the tolls to the shippers who paid them. This rather complicated arrangement was required because treaty commitments with Canada would not allow complete removal of the toll.

The Seaway Corporation would like to return to what is known as "toll retention status" which would allow its operation from those revenues without the necessity of annual Congressional appropriations. I look forward to testimony on both sides of this issue.

The enactment of the Water Resources Act of 1986 was a significant event in the history of water resource management. Passage of the legislation before the subcommittee today is the logical next step toward a responsible, consistent national water resources policy.

Senator MOYNIHAN. Would you proceed, sir?

STATEMENT OF HON. ROBERT PAGE, ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS, ACCOMPANIED BY JOHN DOYLE, DEPUTY SECRETARY; MAJ. GEN. H.J. HATCH, DIRECTOR OF CIVIL WORKS, CORPS OF ENGINEERS; AND BORY STEINBERG, CHIEF OF POLICY REVIEW AND INITIATIVES DIVISION

Mr. PAGE. Thank you very much, Mr. Chairman.

I would like to commence by saying that I understand that today you have joined a very distinguished club of which I have been a member for two months, the 61 Club. Happy birthday.

With me today, to my right, I would like to introduce Major General Hatch, who is Director of Civil Works for the Corps.

Senator MOYNIHAN. Yes, General Hatch.

Mr. **Page**. Bory Steinberg, at the end, who is Chief of Policy Review and Initiatives Division.

Senator **Moynihan**. Mr. Steinberg is well known to our committee.

Mr. **Page**. Sitting next to me is a person who I am sure you all know is the brains behind our organization, the Principal Deputy, John Doyle.

Senator **Moynihan**. Mr. Doyle.

Mr. **Page**. We have prepared a statement, Mr. Chairman, and with your indulgence we would like to submit that for the record.

Senator **Moynihan**. Please do.

Mr. **Page**. Then I would like to proceed with our brief presentation, and following that, your agenda, sir.

We are here today to present to you our testimony. The people that I have with me today who will help with this testimony.

Your letter invited me to testify on the Water Resources Development Act of 1988 sponsored by you, sir, Senators Burdick, Stafford, and Symms; on S. 2101, the administration's bill of the same title, introduced for us by Senator Stafford; and a proposal by the Saint Lawrence Seaway Development Corporation.

I will cover those topics. I'd like first, however, to set the background for the remainder of this testimony.

[Slide presentation.]

This is the first opportunity we have had to address this subcommittee since you presented us with the Water Resources Development Act of 1986, and I think it is appropriate to review what led up to that legislation, how your leadership has shaped and modernized our program, and what we need to do to maintain the momentum of Public Law 99-662.

As background to our comments on S. 2100 and S. 2101 and the Saint Lawrence Seaway Corporation proposal, I will trace the history of how the program was broken, how the reforms of Public Law 99-662 served as a framework for repairing the program, and how well the reforms are working. I will stress the need for a return to the biennial authorization process and the need to preserve the reforms, and will also discuss some initiatives we are taking at this time to build on those reforms.

As you will recall, the Army water resources development program was in a stagnated, political gridlock for roughly 16 years. There were too many projects competing for a very limited budget, and there was a new awareness of the potential effects of such projects on the environment.

Our budgets remained relatively constant during the period, however, as inflation was rising dramatically.

Senator **Moynihan**. Do you want to give us a little more animation there, Mr. Secretary? You say the budget remained constant; in constant dollars——

Mr. **Page**. That's actual dollars.

Senator **Moynihan**. In actual dollars.

Mr. **Page**. Yes.

Senator **Moynihan**. So there was a true decline?

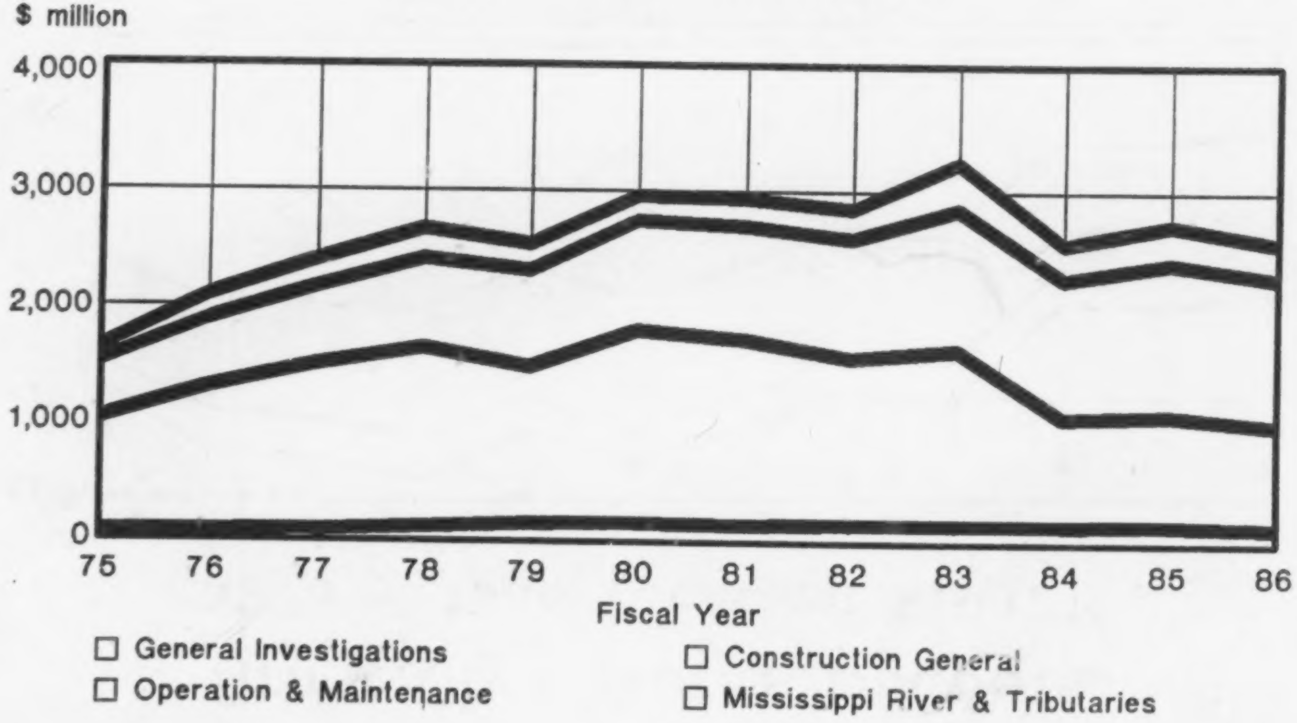
Mr. **Page**. There was a true decline.

Senator **Moynihan**. This is important to our whole inquiry about infrastructure which we have been carrying out for a year now. In terms of the Army civil works budget in that decade more or less, in constant dollars, what happened?

Mr. PAGE. We have that on the next slide. As you see, there is a decline because of inflation. There is the Corps budget in constant October 1987 dollars.

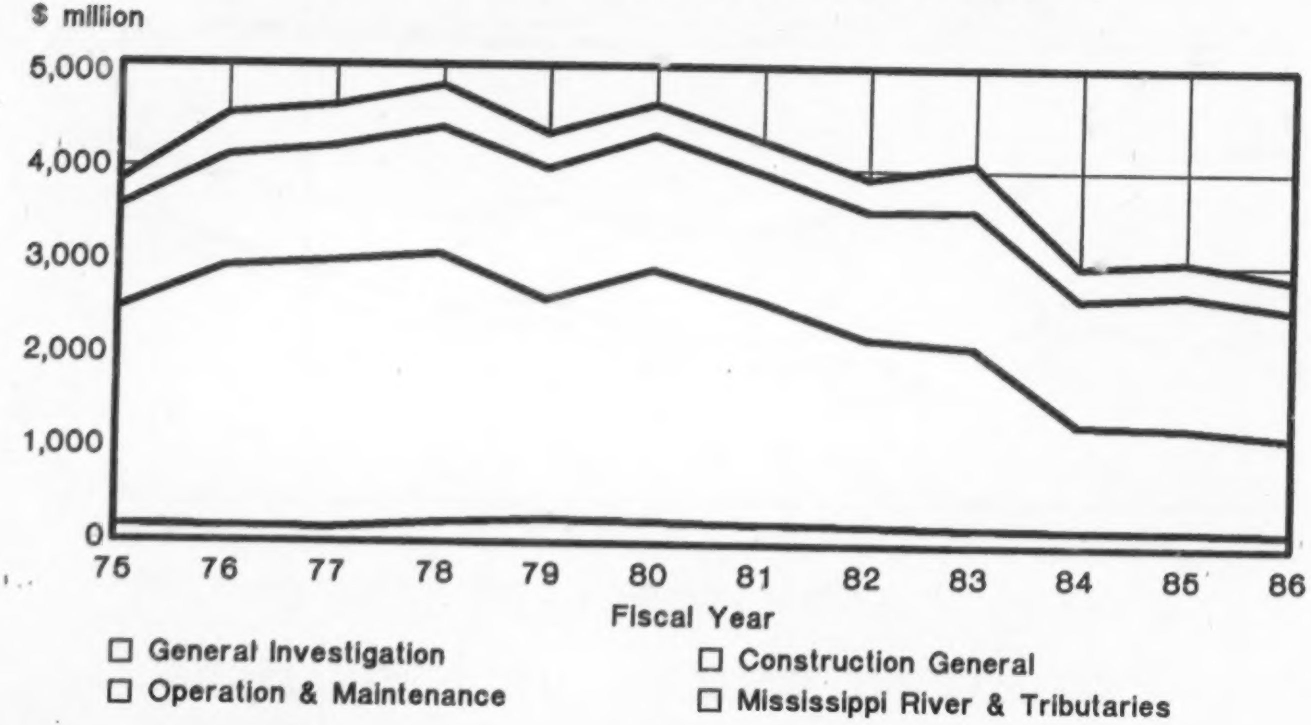
Army Civil Works Budgets

1975-1986 (Actual)



Army Civil Works Budgets

1975 - 1986 (Constant $1987)



Senator **Moynihan**. So you peak around 1977 at about $5 billion?

Mr. **Page**. Yes, sir.

Senator **Moynihan**. You declined $3 billion.

Mr. **Page**. Yes, that's true.

Senator **Moynihan**. So there is a decline of 70 or 80 percent there.

Mr. **Page**. Most of the decline was in construction.

Senator **Moynihan**. That decline begins in 1980 more or less.

Mr. **Page**. Actually it dipped in 1978.

Senator **Moynihan**. That probably is an inflationary dip almost certainly, isn't it?

Mr. **Page**. Then a constant decline starting in 1980.

Senator **Moynihan**. So the decade of the 1980's, we borrowed $1 trillion from the Japanese, and we gave a party, and we spent it all on ourselves, nothing on the future, or not enough.

Mr. **Page**. Well, yes, sir. I suppose it started earlier back in the seventies.

Senator **Moynihan**. But there was at least a 15-year stagnation, as you said, that the whole program just got nowhere.

Mr. **Page**. Yes, that's true.

Senator **Moynihan**. Are there tables in your testimony? I'm sorry, I missed them. It would be good if you gave us some tables.

Mr. **Page**. Yes, sir, we can do that, and also provide you with copies of these slides which you do not have. If there is any further explanation, we can elaborate on the questions that you just asked.

Senator **Moynihan**. We need this. The Congress needs to know it. We sense, but we don't really know it.

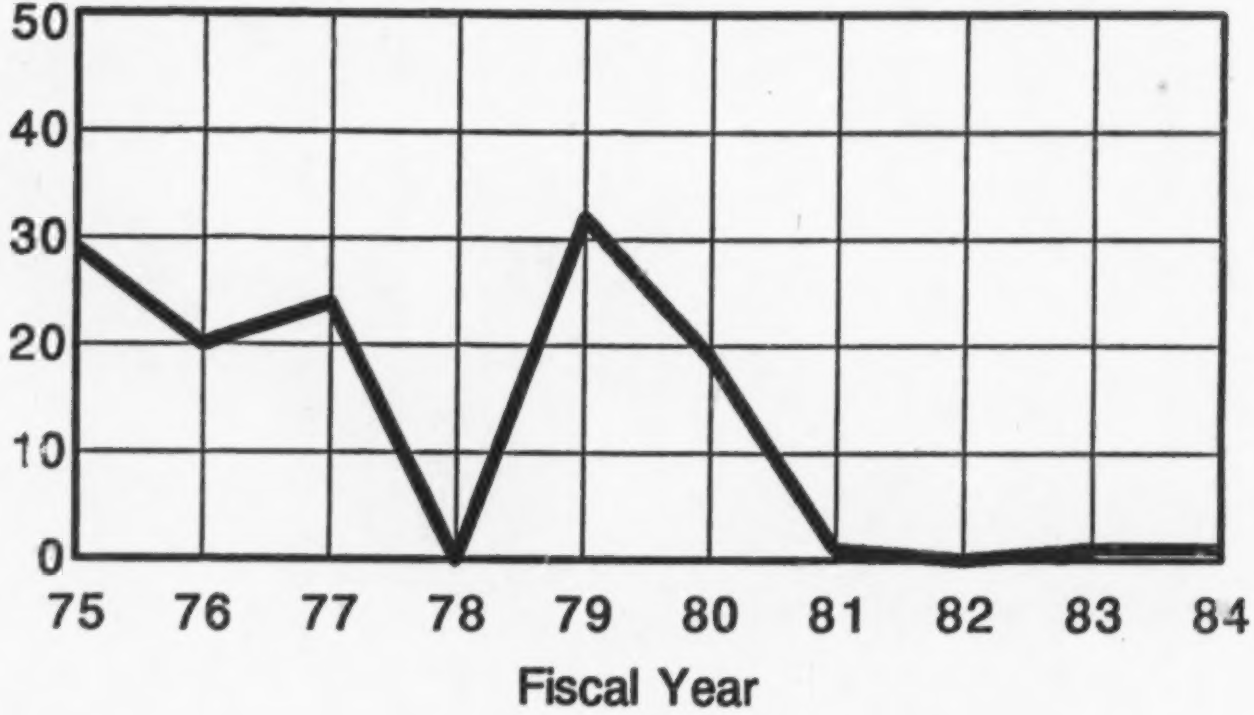
Mr. **Page**. This slide shows our new starts. New starts ranged between 20 and 30 in the 1970's then dropped to only three total in the first four years of the 1980's.

Senator **Moynihan**. That's quite a dramatic table.

Mr. **Page**. Very dramatic.

Senator **Moynihan**. Can the members of the press see that, or do they care to? If they care to, they can come up here and look at it.

Construction new starts



Mr. PAGE. Would you like to turn this thing so they can see it.

Senator MOYNIHAN. I think that helps our audience, and I can follow it too. I think it is a very powerful statement, Mr. Secretary.

Mr. PAGE. Yes, sir.

Senator MOYNIHAN. Construction just came to an end in this decade.

Mr. PAGE. True. It dropped down to almost zero in 1981.

Senator MOYNIHAN. What did we do with all that money we borrowed from the Japanese?

Mr. PAGE. I don't have that in my testimony.

Senator MOYNIHAN. Mr. Steinberg, why didn't you put that in the testimony.

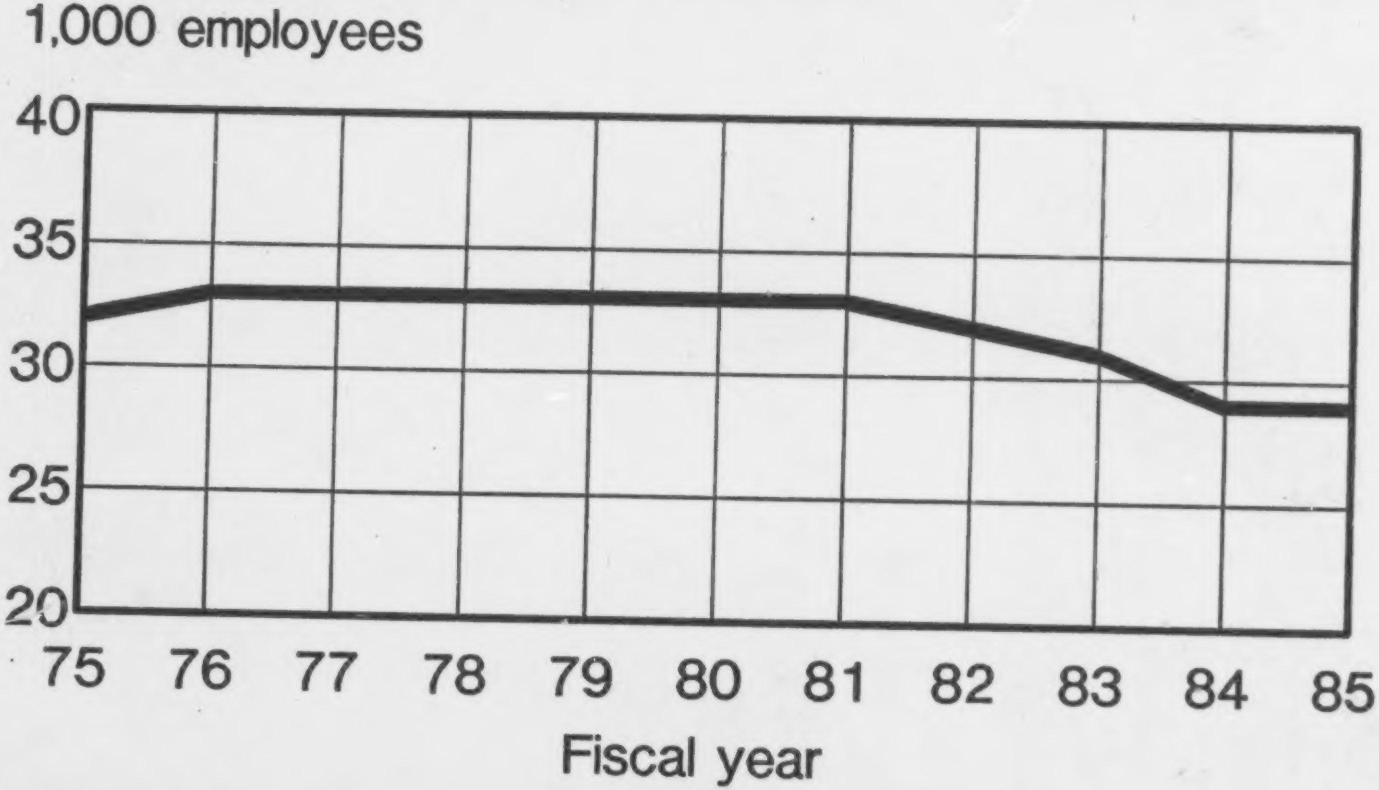
Mr. STEINBERG. We tried to focus on our Corps——

Senator MOYNIHAN. Just kidding.

Go ahead, sir.

Mr. PAGE. This is our personnel ceiling. Of course, with the program shrinking, as we saw, the personnel ceiling shrank as well. It decreased from 32,000 in 1970 to 28,000 in 1985.

Civil Works Manpower Ceiling



Senator **Moynihan**. That is the ceiling assigned you by OMB?

Mr. **Page**. Yes, sir.

Senator **Moynihan**. So you go down starting in 1981 also.

Mr. **Page**. Yes, sir, in 1981 it started down. It looks like it leveled off pretty well in 1984 and 1985, and I think it remains pretty well that way.

This is the Civil Works budget. This chart illustrates the decrease our Construction General program suffered. It falls below $1 billion, as you will see, in 1984.

Senator **Moynihan**. Can you help us with the legend, sir? The yellow line is——

Mr. **Doyle**. Operation and maintenance.

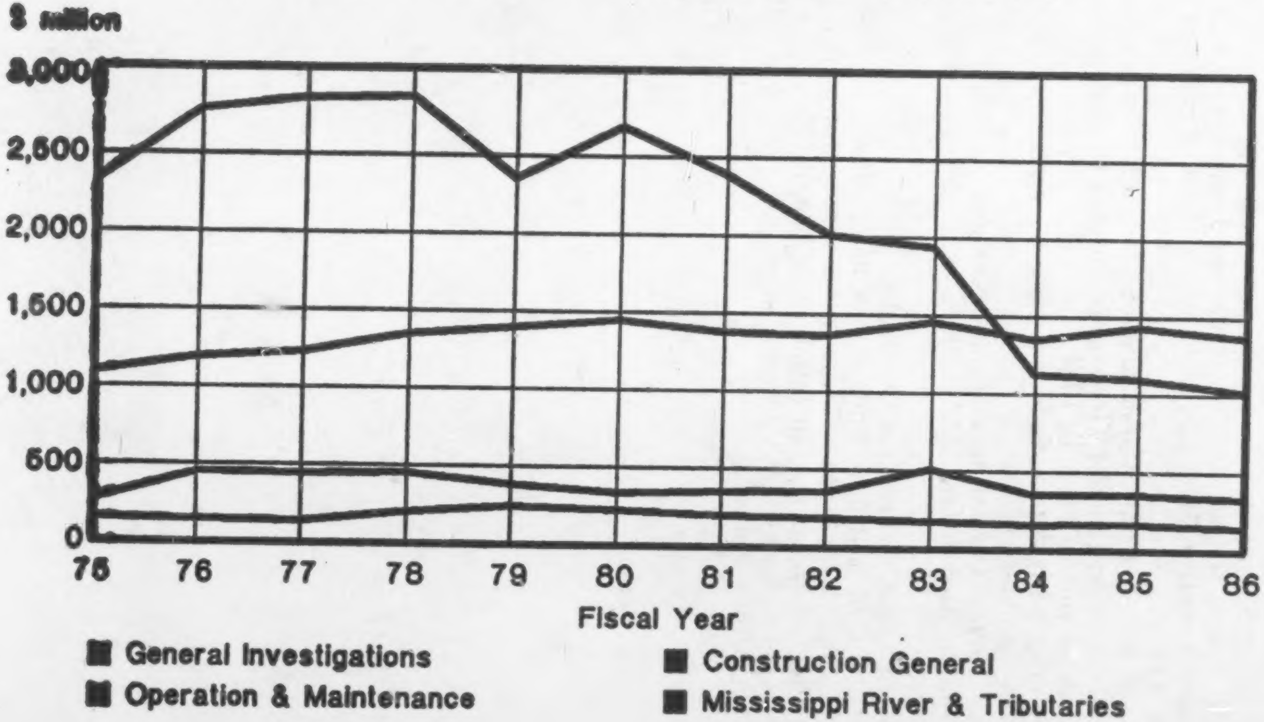
Senator **Moynihan**. O&M. Okay, that's been constant. The green line is?

Mr. **Page**. Construction General.

Senator **Moynihan**. That starts going down in 1980. Well, it's been going down since 1977 by inflationary drop which is obviously the effect of that sharp inflation in 1978 and 1979.

Army Civil Works Budgets

1975 - 1986 (Constant $1987)



Mr. **Page**. We showed you earlier where the Corps budget fell off about 1980. That was primarily as a result of the decrease in Construction General. It took the biggest hit.

Our program needed direction. With the leadership of this committee, Mr. Chairman, the Congress and the Administration gave us the new framework that we needed in the Water Resources Development Act of 1986.

This new framework included several important reforms: the increased cost sharing criteria, new user fees on harbors and inland waterways, cost controls that provide discipline for our program, sunset authorizations that automatically deauthorize weak projects, increased non-Federal participation in the decision making process, the facilitation of non-Federal development of flood control projects, and then of course the establishment of the Inland Waterways Users Board.

Scoping down projects, among the many significant program enhancement we had hoped to——

Senator **Moynihan**. Do you want to give us a little glossary here? Down scoping.

Mr. **Page**. Down scoping is what we have done is reduced the size, reduced the scope, and reduced the cost of a project as it was originally conceived.

This slide is self-explanatory. I think it is quite significant.

DEPARTMENT OF THE ARMY • UNITED STATES OF AMERICA
1775

Project down scoping

Project	Authorized	Scheduled	$ deferred
Baltimore Harbor	50'dx1000'w	50'dx700'w	69 mill
Norfolk Harbor	2 channels 55'd	1 channel 50'd	100 mill
Little Dell	253'h. dam	226'h dam	22 mill
Merced County	3 dams	1 dam	78 mill

Senator **Moynihan**. Mr. Secretary, but we don't have these slides.

Mr. **Page**. No, sir, but we are going to give them to you.

Senator **Moynihan**. Would you, because it helps us and our staff here. We see what you are seeing.

Mr. **Page**. Would you like to have a copy to follow with us up there?

Senator **Moynihan**. No, but I would like for our records to have these numbers.

Mr. **Page**. Yes, sir. We will put those in the record.

[The information requested follows:]

CORPS BUDGET
($ MILLION)

	GENERAL INVESTIGATIONS		CONSTRUCTION GENERAL	
Fiscal Year	Actual	Oct 87 Price Level	Actual	Oct 87 Price Level
1975	65	145	966	2334
1976	67	142	1237	2791
1977	72	132	1430	2864
1978	107	197	1538	2876
1979	138	237	1344	2356
1980	142	222	1660	2695
1981	134	192	1594	2394
1982	137	184	1430	2010
1983	139	167	1508	1942
1984	136	155	927	1127
1985	141	159	947	1098
1986	123	141	880	1017
1987	136	148	1149	1259
1988	139	144	1200	1256
1989	129	129	1228	1228

	OPERATION & MAINTENANCE		MISSISSIPPI RIVER & TRIBUTARIES	
Fiscal Year	Actual	Oct 87 Price Level	Actual	Oct 87 Price Level
1975	495	1095	120	
1976	582	1191	205	
1977	668	1228	231	
1978	769	1352	253	
1979	833	1398	223	
1980	941	1447	211	
1981	968	1380	237	
1982	1025	1366	256	
1983	1201	1456	403	
1984	1185	1350	302	
1985	1308	1433	322	
1986	1260	1368	301	
1987	1390	1471	311	
1988	1455	1485	318	
1989	1373	1373	334	

CONSTRUCTION NEW STARTS

Fiscal Year	Number Starts
1975	29
1976	20
1977	24
1978	0
1979	32
1980	19
1981	1
1982	0
1983	1
1984	1
1985	41
1986	0
1987	31
1988	39
1989	6

This graph depicts how our program is faring in the wake of Public Law 99-662. Our Construction General account has increased nearly 40 percent since passage of the act, and non-Federal financing is up from a mere 3 percent to 14 percent of our construction budget.

This slide shows you where the budget decreased as Construction General dropped, and then following P.L. 99-662, how it has increased, and what the benefit of that——

Senator MOYNIHAN. What you are saying here is that the act is beginning to take hold?

Mr. PAGE. Yes, sir, it is taking hold.

Senator MOYNIHAN. The long secular decline is now reversed.

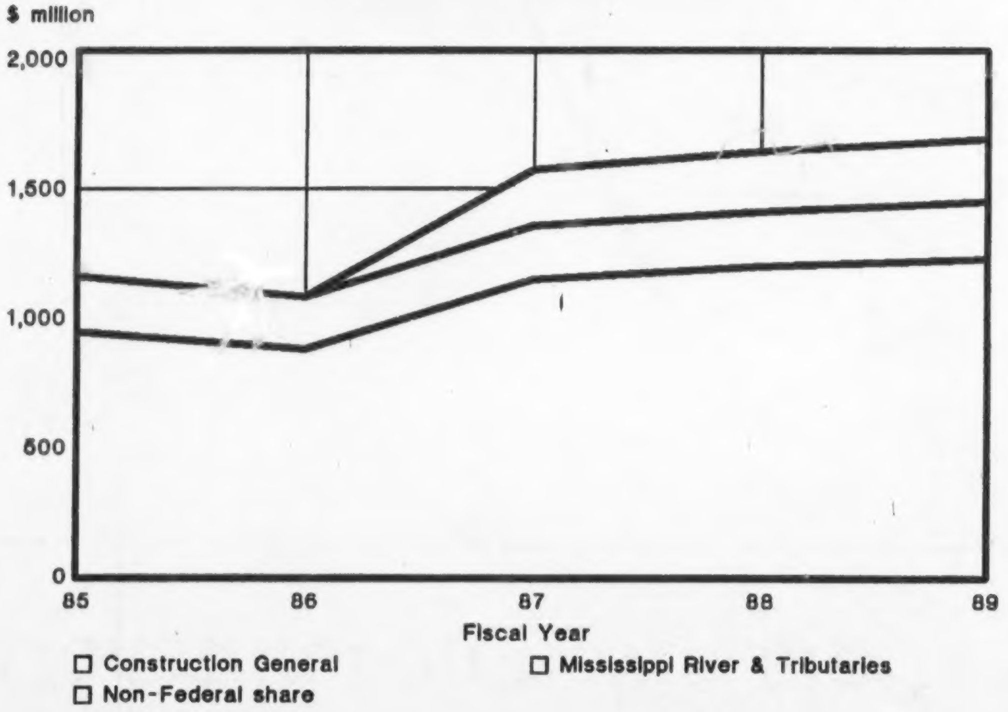
Mr. PAGE. Very dramatically, yes, sir.

Senator MOYNIHAN. Give us those numbers, Mr. Secretary.

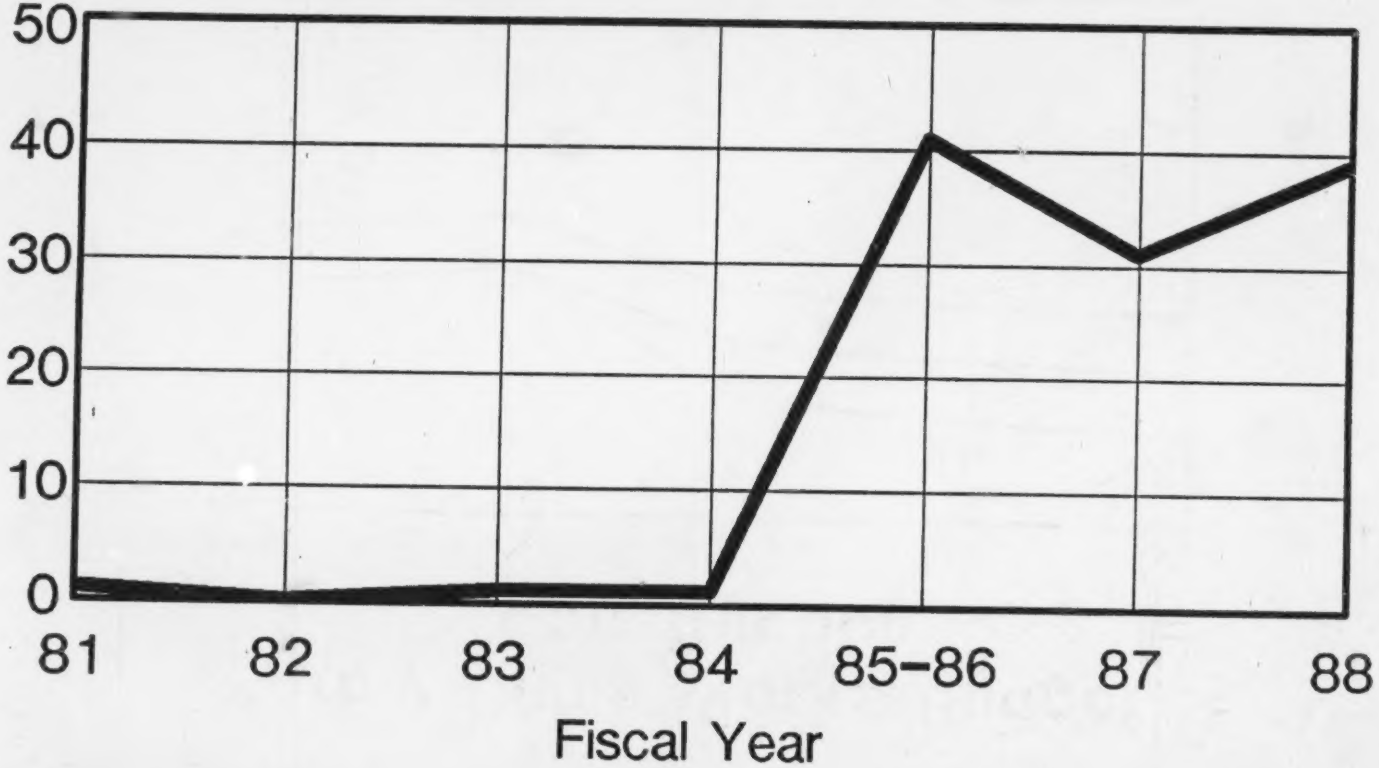
Mr. PAGE. Yes, sir.

Since cost sharing, we have had forty-five new construction starts, and we have budgeted another 66. Very dramatic.

Army Civils Works Budget Construction



Construction news starts



Senator **Moynihan**. We finally got you out of that ditch.

Mr. **Page**. Sir?

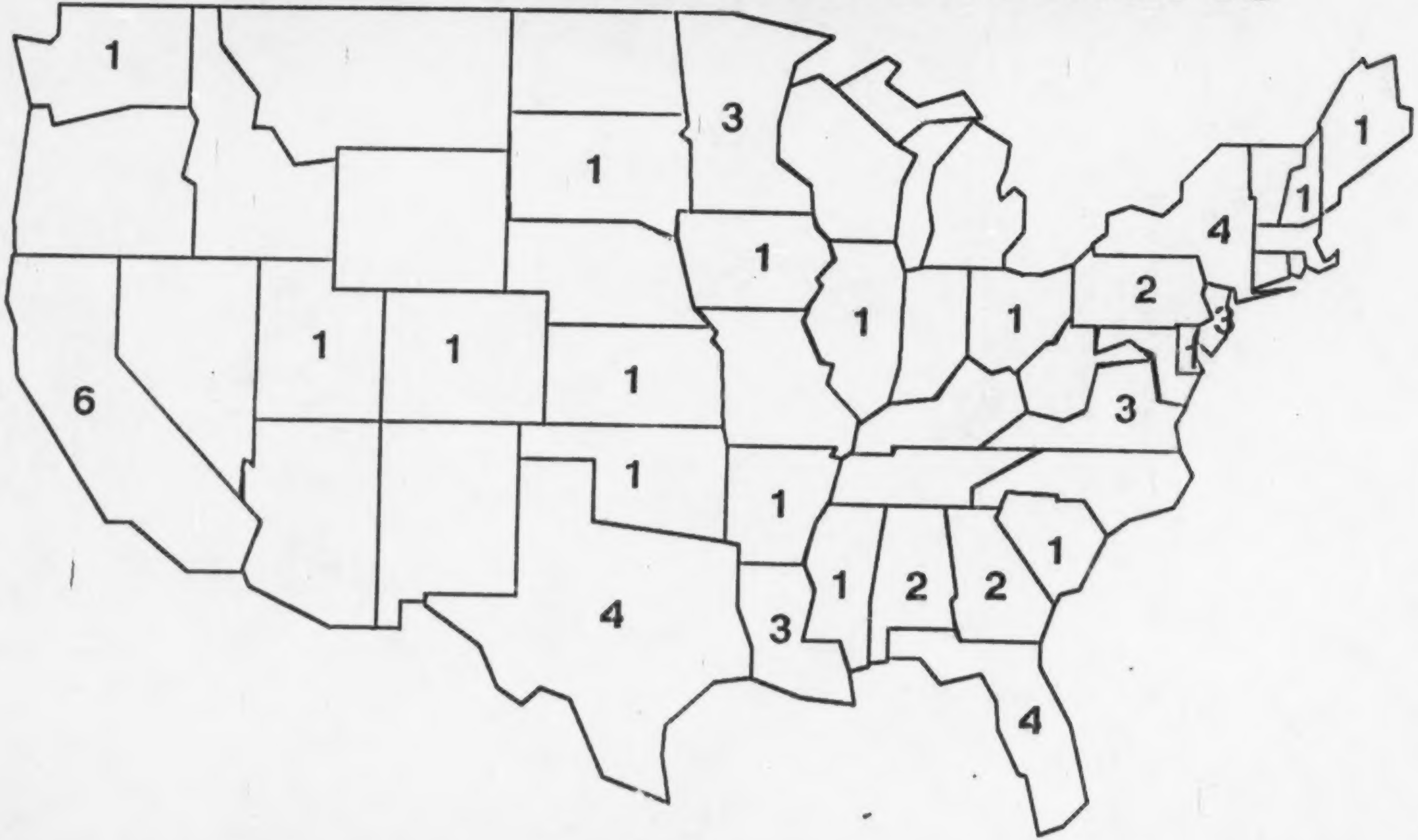
Senator **Moynihan**. We got that ox out of a ditch.

Mr. **Page**. For the time being.

This is a map which shows where we have taken part in celebrations across the country. We have kicked off harbor dredging projects. We've signed some LCA's in Portsmouth, New Hampshire; New York, Baltimore, Norfolk, Tampa, and New Orleans. We've celebrated the signing of agreements for flood control projects for Rochester, Minnesota; Richmond, Virginia; the St. John's River in Florida; and environmental enhancement projects such as the fresh water diversion in Louisiana.

These projects involve construction which will cost hundreds of millions of dollars. This money will be invested in each of these areas. This slide gives a fairly good road map of the distribution of new starts.

New Construction Starts


1
3
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4
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2
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1
1
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1
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6
3
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1
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1
2
2
4
3
4

Senator **Moynihan**. What are the projects in New York?

Mr. **Page**. We have a list of these. In fact, they are in our book here. We would be happy to provide you with the list.

[The list referred to follows:]

EXECUTED LOCAL COOPERATION AGREEMENTS—NEW CONSTRUCTION STARTS

Project	State	LCA executed
Fiscal year 1985's projects:		
Mobile Harbor	AL	June 13, 1986.
Fairfield	CA	May 29, 1986.
Merced County Streams	CA	June 27, 1986.
Sacramento R. Ship Chan	CA	June 27, 1986.
Tampa Harbor Br. Chan	FL	June 20, 1986.
Dade Co. Haulover	FL	June 20, 1986.
Savannah Harbor	GA	June 20, 1986.
Kahoma	HI	June 24, 1986.
Des Moine R. (Bennington BR)	IO	June 26, 1986.
Miss. R. Gulf to Baton R	LA	June 30, 1986.
Pearl River, Slidell	LA	June 30, 1986.
Baltimore Harbor	MD	June 17, 1986.
Jonesport Harbor	ME	June 16, 1986.
Bassett Creek	MN	June 27, 1986.
UMRS-EMP—Blackhawk Park	MN	June 30, 1986.
Barnegat Inlet	NJ	May 19, 1986.
Kill Van Kull	NJ	May 30, 1986.
Liberty State Park	NJ	June 26, 1986.
Ardsley	NY	June 23, 1986.
Ellicott Creek	NY	Jan. 20, 1984.
Moriches Inlet	NY	June 30, 1986.
Port Ontario Harbor	NY	June 23, 1986.
Geneva on the Lake	OH	June 26, 1986.
Cowanesque	PA	June 30, 1986.
Missouri Natl. Rec.-Myron	SD	June 24, 1986.
Boggy Cr. at Austin	TX	June 27, 1986.
Clear Creek	TX	June 30, 1986.
Freeport	TX	June 26, 1986.
Little Dell	UT	June 30, 1986.
Norfolk Harbor	VA	May 15, 1986.
Richmond Fld Prot.-James R	VA	June 15, 1986.
Virginia Beach Streams	VA	Apr. 2, 1986.
Fiscal year 1986/1986's projects under construction:		
Wildcat/San Pablo Creeks	CA	June 20, 1986.
Mt. St. Helens	WA	Apr. 26, 1986.
Fiscal year 1987 projects:		
Threemile Creek	AL	Sept. 30, 1987.
Fourche Bayou	AR	Aug. 21, 1987.
Pajaro	CA	June 23, 1987.
Red Bank & Fancher Creeks	CA	Aug. 1, 1987.
Fountain Creek	CO	July 27, 1987.
Jacksonville Hbr-Mill Cove	FL	Jan. 1, 1984.
C&S FL—Upper St. Johns	FL	Dec. 30, 1987.
S. Quincy Drainage	IL	Aug. 11, 1987.
Great Bend	KS	Aug. 12, 1987.
Caernarvon Diversion	LA	June 10, 1987.
S.F. Zumbro River	MN	Aug. 27, 1987.
Sowashee Creek, Meridian	MS	Sept. 23, 1987.
Portsmouth Harbor	NH/ME	Feb. 4, 1988.
Delaware River	PA	Apr. 28, 1987.
Lake Wichita	TX	June 13, 1987.
Fiscal year 1988 projects under construction (1):		
Savannah River, Oates Cr	GA	Mar. 10, 1988.
Mingo Creek	OK	Jan. 22, 1988.

EXECUTED LOCAL COOPERATION AGREEMENTS—NEW CONSTRUCTION STARTS—Continued

Project	State	LCA executed
Charleston Harbor	SC	Feb. 5, 1988.

Senator MOYNIHAN. You would be surprised how much interest there would be in this body to locate names with each of those little indicators.

Mr. PAGE. I'll tell you what we can do. We will give you a list, but we will also get a map like that.

Senator MOYNIHAN. That would be very thoughtful of you.

Mr. PAGE. Or we can read them to you at this point if you would like.

Senator MOYNIHAN. Yes, read them to us.

Mr. PAGE. Bory, can you read them off?

Mr. STEINBERG. We have a list of over 100 that have been funded by Congress between 1985 and 1988, plus the six additional ones that are in the 1989 budget, sir.

Senator MOYNIHAN. Fine. You don't have to read it, Mr. Steinberg, but leave it. Once you tell us this, if you come back next year and you haven't done it, we can ask you why. That's called oversight.

Mr. PAGE. Yes, sir.

This is a status report. Here are some indicators of our success in implementing the provisions of Public Law 99-662.

Senator MOYNIHAN. You are finding it working? You like the way it is working?

Mr. PAGE. Yes, sir. We could talk about the benefits of this thing for some time, but I think the impact of P.L. 99–662 are extremely positive, including many benefits other than we originally anticipated.

Senator MOYNIHAN. Mr. Secretary, you are going to have to forgive me one minute. We are going through our morning bed checks. We are seven minutes into the rollcall. I will ask to stand in recess for a very short while. It will be five minutes. I would like to hear from you what do you think happened, because something has happened.

[Recess.]

Senator MOYNIHAN. The committee will resume.

Mr. Durenberger is joining us in a moment when we get to the seaway area.

All right, sir. We have had a very positive set of reports from you. Is there something further you would want us to know about the distinctions between 2101 and 2100, which, of course, we are aware of.

Mr. PAGE. Yes, sir. We will cover that if you wish in our question and answer period. I would like to just sum up here. You left with a question, and I would like to summarize what P.L. 99-662 has done.

It is obvious that it has infused a great deal of effort and future growth in the Corps of Engineers. When you do that, you can also look to the private sector and see the intangible benefits of the bill.

That is, the engineering construction industry also needs this work very badly. The construction generated by P.L. 99-662 is going to be a big boost for the private engineer construction industry which represents about 13 percent of our gross national product.

Senator MOYNIHAN. It does.

Mr. PAGE. It represents the largest single industry in this country. This is going to be, Senator, a great deal of help. I look forward to it, and I am very happy to be part of this. I am appreciative of what you have done, and the committee, in bringing this thing forward for us.

Senator MOYNIHAN. Mr. Secretary, we would like to say the same. We would like to say also we have your charts.

Mr. PAGE. Yes, sir. I have another one for you if you wish.

Senator MOYNIHAN. I would like to have the secretary's personal chart, yes, I would.

Mr. PAGE. This chart has New York.

Senator MOYNIHAN. It is all very clear, and that's a pretty encouraging thing to see.

Mr. PAGE. Yes, it is very encouraging.

Senator MOYNIHAN. We want to thank you for all you have done, all the military under General Hatch has done, and the career employees, Mr. Doyle, Mr. Steinberg.

I am going to ask one question. It's parochial, but there is no thing more parochial in the one sense than public works because they are inextricably place-denominated. You can't do anything to the Mississippi River in California; you must do it along the banks of the Mississippi.

Last year in this legislation, earlier in an authorization, and then last year in the appropriations bill, we provided for a simple cost-sharing program between the Federal Government and the State of New York on the Erie Canal, the New York State Barge Canal technically. We could not be accused of aggression in this regard. We waited 170 years. We couldn't get any help out of Mr. Deverson because he wanted to build what became the Tennessee Tombigbee.

We now have a good canal. In the next war, when the Japanese bomb the Welland Locks owing to the longer range of their aircraft, the only access we will have to Minneapolis from the North Atlantic is through the Erie Canal. In literal fact, as Mr. Emery will testify if he were asked, there was a time recently when the Welland was closed down and shipping had to go through the Erie—not shipping, but products had to be shipped. It's a barge canal.

Secretary PAGE. Yes, sir.

Senator MOYNIHAN. We did that in good faith, sir. The Congress authorized the measure and appropriated the money, and then OMB has taken it out. I've had good discussions with your predecessor Mr. Dawson, who has been very helpful. But, I've been 12 years at this. Public works has been my principal interest. We broke that 16-year stalemate. I learned about it, I worked at it, I got it done for you. You're back in business. After an 80 percent decline in your budget, you are moving up again, and you deny us that.

How do you explain that, sir?

Secretary **Page**. Mr. Chairman, I can explain it by reading this document, but that doesn't satisfy you and I don't have the background to explain it more fully. If you would allow me, I would like to have John Doyle, who has been here much longer, to address this question.

Senator **Moynihan**. Sure, of course I would.

Mr. **Doyle**. As I understand the decision that was reached, Senator, the funding that was included in the continuing resolution for the New York State Barge Canal was not in statutory language, it was in report language. There was a view taken that report language simply required the administration to exercise discretion as to whether or not the funds should actually be obligated.

The amount of funds that were obligated in the CR for our program when totalling all the direction in the statutory language and all the direction in the report language came up to more money than we had available, and in prioritizing the work and trying to spread that allocation out, this project didn't make it.

Senator **Moynihan**. Yes, I know that. But I want you to know I take it as a personal affront. I take it as OMB's very personalized way to say they don't like us having revived the Army's civil works program, that they resent us. They wanted a continuation of no starts. They wanted to end this activity, and we decided up here not to.

But don't think we can't do it after all. I don't propose to let this—this was personal. This is an insignificant amount of money, a symbolic amount of money. How much did you spend on the Tennessee Tombigbee last year?

Mr. **Doyle**. I'll have to provide that for the record, sir. The construction of course is——

Senator **Moynihan**. Don't ever come before this committee again unless you can tell me how the Tennessee Tombigbee is going.

How is it going? General?

General **Hatch**. Sir, the operation is going fairly well.

Senator **Moynihan**. I mean, in terms of your projections of traffic?

General **Hatch**. Sir, the Tennessee Tombigbee Waterway, as you know, opened a year or so early. The projections of traffic have not been realized. We attribute that largely to an overall downturn in the economy, and particularly the industry associated with the use of such a waterway. The traffic on the waterway has been increasing. I'll have to provide for the record the specific numbers. It is short of our projections.

[The information referred to follows:]

FACT SHEET

JANUARY, 1988

SUBJECT: Tonnage Projections and Historical Movements on the Tennessee-Tombigbee Waterway

1. Purpose. To summarize the waterway traffic projections and the actual movements for the Tenn-Tom navigation system.

2. Projected Movements. The Authorizing Document, River and Harbor Act, 24 July 1946 (House Document 486, 79th Congress 2nd session), projected that the annual tonnage that would move on the new waterway would be 5,764,000 tons. The benefit cost ratio of the project was 1.05 to 1.0 at that time.

a) In the Supplement to the General Design Memorandum, 30 June 1966, it was projected that 12,908,000 tons would be moved in 1976 with continued growth to 39,484,000 tons in 2026. The benefit to cost ratio was estimated at 1.24 to 1.0.

b) In the Supplement to the General Design Memorandum (Restudy of Project Cost and Benefits, Economic Reanalysis Summary), 12 February 1976, A. T. Kearney: Management Consultants, projected 28,071,000 annual tons in 1986, which would generate savings of $55,523,,000. The tonnage was projected to grow to 44,000,000 tons in 1991. The benefit to cost ratio was estimated to be 1.08 to 1.0.

c) In the Operational Forecast for Initial Traffic on the Tennessee-Tombigbee Waterway (TTWW), August, 1985, BHS Economic Research reported that 14,453,000 tons of commerce were available to move over the TTWW the first (full) year of operation (which was 1986).

3. Projected Annual Tonnage and Actual Movements. The attached graph compares information from the studies described in paragraph 2 with actual tonnage to date since the opening of the waterway shown below.

1985	1,701,000
1986	3,651,000
1987	4,085,000*

4. Factors affecting tonnages are: 1) uncertainty in the oil market that impacts on demand and price of coal and coal products, 2) deregulation and its attending effects on rates for competing transportation modes and 3) a general economic depression that has affected the barge and tow industry.

* December, 1987 tonnage estimated.

5. Additional Benefits to the Tenn-Tom Waterway

a) The Tenn-Tom Waterway is experiencing unique movements particularly of "empty" barges. These barges are generally from the Mississippi and are taking a less congested route to their home bases. For example, in December 1987, 323 empty barges were recorded passing through Bay Springs Lock and Dam. Of these 292 were upbound. The benefits to moving empties has not been quantified.

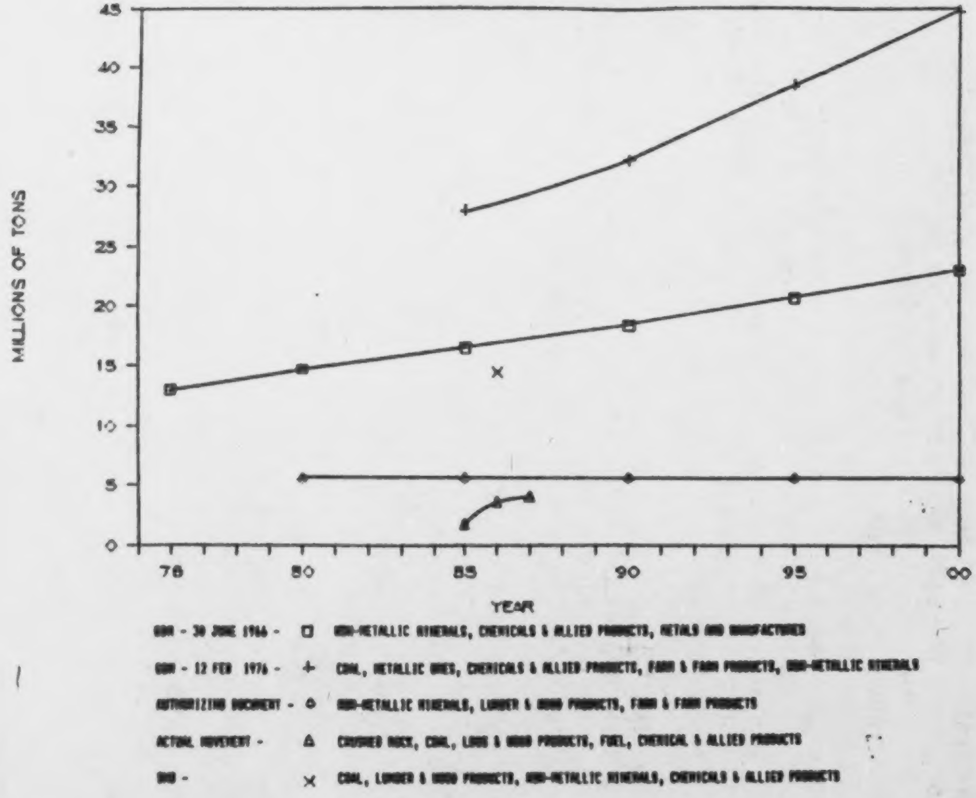
b) Based on previous experience, rail freight rates are usually reduced significantly when barge transportation alternatives are possible. The exact shipper savings are unknown; however, a preliminary estimate noted possible savings of $1-2 million per year. A study to determine exact shipper savings is underway and the results should be available in 1988.

6, Expenditures for Operation and Maintenance

Expenditures for Operation and Maintenance of the Tennessee Tombigbee Waterway were as follows:

FY 85	$11,170,000
FY 86	$13,172,000
FY 87	$18,766,000

TENN-TOM TONNAGES



Senator MOYNIHAN. Short makes the projections look derisory, General, and you know it. They weren't your projections, and I'm not asking you to be held accountable for it.

But listen, Mr. Secretary, thank you for coming.

Secretary PAGE. Yes, sir.

Senator MOYNIHAN. But go back and say this chairman of this committee takes personal offense at what OMB did. I've worked 12 years to get the Corps of Engineers back into the work of building infrastructure in America. When we got on board the Corps was building more projects in Saudi Arabia than in the United States. We've changed that.

I did one thing which would seem to me a symbolic thing and an important thing. That is an important waterway. You've never put a penny in it in 170 years, and you deny us the miserable $10 million. I am not going to forget it. I am not going to forget it, and you aren't going to forget it either. It is not your doing, Sir, but you did not object to it. You did not go to OMB and say, "I will not have that. Are you out of your heads?"

You have a multibillion dollar program here, and you have chosen to do the one thing you know perfectly well the chairman will take offense at. I'm sorry about that. I'm very sorry about that. I wish it hadn't happened.

Senator Durenberger?

Senator DURENBERGER. Mr. Chairman, I don't have anything specific to offer other than reaction to sitting here in an even-numbered year at the end of an administration listening to a person who has committed a good part of his life, not just to the increments of public service, but the totality of it. I can relate in a small way to your frustration.

I just try to say to these people and the people that succeed them that, as I sit on this side of the table with the expectation I'll be here for a long time, and knowing that public works is always a long-term investment and long-term decisionmaking, that the frustration of the Senator from New York is not to be taken lightly by anybody at this table. Even though your tours may be relatively limited, your responsibility is not. I think he has adequately reflected that sense of responsibility.

Senator MOYNIHAN. Thank you, Senator.

Thank you, Mr. Secretary. Thank you, General.

Secretary PAGE. We are not taking it lightly, believe me.

Senator MOYNIHAN. Our next witness will be the Honorable James Emery who is Administrator of the Saint Lawrence Seaway Corporation and who has issues to discuss with us.

Mr. Emery, we welcome you, sir.

Senator DURENBERGER. Mr. Chairman, in advance of Mr. Emery's testimony, I have a very brief statement.

Senator MOYNIHAN. Will everybody just quiet down a minute, Senator Durenberger would like to make a statement.

OPENING STATEMENT OF HON. DAVE DURENBERGER, U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator DURENBERGER. Mr. Chairman, almost 18 months ago the President signed the Water Resources Development Act into law, Public Law 99-662. The purpose of today's hearing is to review the experience of the past year and a half to determine what is working and what changes need to be made, as we know.

As the architect of some of the major provisions in the legislation, I would like to think the act we designed was flawless. Unfortunately, that is never the case. Judging by the statements that will be made by some of today's panelists, as well as letters I have received from some of my constituents, there may be room for improvement. Hopefully the next two days of hearings will tell us how these changes should be made.

I would like the chairman to know that my particular interest in today's discussion is in that of the Great Lakes, the Saint Lawrence Seaway provisions in the act and the request by the current administrator to replace them with a different system.

As the distinguished Chair knows, the issue that will be raised by the administrator does not fall within the jurisdiction of this committee but another committee on which both of us serve. But, nonetheless, I am interested, as we are interested, in hearing how we can improve upon a system which pays 100 percent of the seaway's operating and maintenance expenses and has left the administrator with a $10 million cash surplus to use as he sees fit.

My only regret is that the hearing had to be called at a time when all but two of the Great Lake port directors are on an overseas trade mission sponsored by the administrator. I would hope that when they are home to this country and have an opportunity to review the information that is compiled as a result of this hearing that I may get a more definitive statement on this subject based on their testimony.

Senator **Moynihan**. Might I say to my distinguished friend that we will hold that hearing any time he indicates he desires it.

Senator **Durenberger**. Thank you, Mr. Chairman.

Senator **Moynihan**. I am happy to do it. You and I are the alpha and omega of the system, I suppose, aren't we. It is important to us, and it is our pleasure to have the administrator before us.

Mr. Emery, good morning. Proceed, sir.

STATEMENT OF HON. JAMES L. EMERY, ADMINISTRATOR, SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

Mr. **Emery**. Thank you, Mr. Chairman, and Senator Durenberger. It is a pleasure to be with you.

I did leave your port director from Duluth overseas. He is the only one, however, who has not returned, but he had additional business. We have just returned from I think a very successful trade mission with the port directors from New York, Mr. Chairman, from Oswego, and all the way through the system to Duluth. That's one of the great advantages of having the Saint Lawrence Seaway as a corporation, and one of the things I will allude to today as to why I think it is important that we have autonomy.

Senator **Moynihan**. Where were you?

Mr. **Emery**. We were in Germany, The Netherlands, Italy, Egypt, and Algeria. Some people ask, why Algeria. Some one million tons of grain went from Duluth last year to Algeria, and it is important that we maintain that contact with that country.

On behalf of the employees of the seaway, many of whom are here from New York today, Mr. Chairman, we bring you greetings on your birthday as well. We hope you have a wonderful day, not only today but tomorrow as well, which is another important day for all Irishmen. I hope that you have a good celebration.

Senator **Moynihan**. Thank you.

Senator **Durenberger**. If the witness wouldn't mind, I knew that we were approximating the Senator's birthday. I didn't know it was today. Today though, I must point out, is also the birthday of St. Uhro who is to Finland what Patrick is to Ireland. In fact, I am told it was Uhro who drove the grasshoppers out of Finland and somehow they made their way to Ireland fattening the snakes and making it possible for us to celebrate St. Patrick's Day.

Senator **Moynihan**. That's perfectly coherent.

Senator **Durenberger**. That and the Erie Canal getting to Minneapolis.

Mr. **Emery**. Well, that was a good point because, indeed, when the Welland Canal was down, the Senator was correct that we had—military cargo that was transmitted through the Port of Oswego, and there was some heavy machinery that was routed to Cleveland through the barge canal, the Erie Canal in New York. So we did utilize it when we had trouble. So I think that his point was very well taken.

Let me point out that I am here today for the opportunity to testify before the subcommittee on the need to amend the provisions of title XIV of Public Law 99-662. This act required that the Seaway Corporation operate as an appropriated agency of the Federal Government.

I would like to state at the outset that we in no way, nor does the legislation that is here on behalf of the administration, tamper with the rebate provision whatsoever. We are fully supportive of the rebates from the Harbor Maintenance Trust Fund. It is our intent only to clarify the way in which the Seaway Corporation operates internally as a non-appropriated agency.

The 83d Congress, which authorized construction of the seaway, established the corporation as a self-financing entity. There are a number of advantages in this arrangement.

One, it impels the corporation to control costs in order to live within its toll receipts.

It gives the corporation a built-in incentive to promote trade and traffic in order to generate additional toll receipts.

It ensures that tolls paid to the seaway are applied toward seaway programs and services.

It provides the seaway with a dedicated and secure cash flow that does not have to be supplied by the Federal treasury.

It allows the corporation to deposit retained earnings in a reserve fund to finance emergency repairs and capital improvements. These reserve funds are placed in minority bank deposits, as dictated by an executive order, with the interest income earmarked for maintenance projects.

The user fee structure served the seaway extremely well for 28 years. However, effective April 1st, 1987 when the Water Resources Act of 1986 took effect, the corporation became dependent on annual appropriations from the Harbor Maintenance Trust Fund and lost the advantages of a self-financed entity.

Mr. Chairman, the administration has again requested a return to toll financing in the President's 1989 budget because it believes it is the most efficient and effective way to manage the corporation.

The concept of a self-financed entity has had broad based support in the Great Lakes community. For example, the Advisory Group for Strategic Planning for the Saint Lawrence Seaway made up of local, State and federally elected officials, as well as industry and labor representatives in their report to the Secretary of Transportation on November 11, 1986 stated:

> An autonomous independent corporation is key in promoting the Great Lakes and providing leverage in toll negotiations with the Canadians. The corporation should remain independent and retain an adequate revenue stream to efficiently maintain and market the seaway system.

Let me reiterate that the restoration of this historic method of funding has broad based support among industry, labor, and locally elected officials throughout the Great Lakes region.

As I pointed out, the administration's proposed legislation does not affect the rebate of U.S. tolls to shippers. They will continue to be paid from the Harbor Maintenance Trust Fund.

Moreover, Mr. Chairman, the only way the corporation can respond to the clearly expressed desire of Congress and our users, the shippers, that all tolls, including Canadian tolls, be rebated is to accomplish this through bilateral negotiations. Our position in negotiating with the Canadians on this point would be stronger if our operations were funded as they were before.

The corporation's business-type budget and programs would continue to be subject to oversight by the Senate and House Appropriation Subcommittees on Transportation. In addition, the corporation will continue to be subject to periodic audit by the General Accounting Office.

This change should have no immediate budget impact, but should lead to efficiencies because the corporation would have to control costs in order to live within its toll revenues.

I think it is important to clear up some misconceptions about our requested return to toll financing.

First of all, the only impact the return to toll financing can have on shippers is a good one, and that is the possibility that the seaway will have to be shut down due to a delay in the appropriation process will be eliminated. Under toll retention, the seaway stays open and continues to operate.

Second, under toll retention ports can only benefit as the system is promoted and traffic increases. The ports want more business, and so do we. That is why we are asking for this change in the toll structure.

Third, toll financing would compel us to operate more efficiently and lessen the possibility that we would require additional operating funds from Congress. Indeed, it would be less.

In 1983, when my appointment was made by President Reagan, we had two problems facing the seaway: the costs were high, the revenues were low. We set out, first, to get our costs under control. We have done this with our unions that we deal with in Massena.

We are the only real collective bargaining unit in the Federal Government. We are able to bring our costs in line, we are able to beef up our maintenance program, our capital construction program, and we are able to maintain toll revenues today at the same level they were when I came into this job in 1983.

That was not an easy task to accomplish. We accomplished it with the help of all the people dedicated to that seaway, particularly our men and women who work for us in Massena, New York.

Finally, the seaway is a binational operation which has been a model of international cooperation. The corporation's current appropriated status raises serious questions as to whether or not the United States has reneged on its 1959 toll agreement with Canada. It jeopardizes our bilateral working relationship and could have serious impact on shippers.

In conclusion, Mr. Chairman, I believe the following points provide substantial and authoritative support for a return to toll financing.

Toll financing provides important incentives, lacking with appropriated funding, to increase cargo traffic and operate more efficiently.

Without toll financing, the corporation loses leverage in negotiating with the Canadians on toll levels.

Toll financing is more consistent with a business type budget that a Federal corporation is required to prepare.

Under toll financing, through aggressive cash management and productivity improvements, the corporation was able to carry out an active program of capital improvement and also finance $2 million in extraordinary concrete repairs.

If the corporation continues on an appropriated basis, it will be subject to across-the-board reductions required in the deficit reduction process. As I pointed out, we already went to the bottom line in order to maintain toll levels on the seaway. After getting to that bottom line, we have taken two extremely hard across-the-board hits in our financing that has somewhat jeopardized our operation. I certainly feel that in the future if we continue to take deficit reductions, that we will be in a position that we will either have to defer maintenance, capital improvements, or, indeed, there is a possibility of an early shutdown.

Toll retention is supported by the Secretary of Transportation and I would point out that the Secretary stresses that the proposed legislation does not affect the rebate of U.S. tolls to shippers. I think that is very key to this because some people feel we are reverting back to the total old system, and we are not.

I thank you, Mr. Chairman, for the opportunity. I am very pleased to respond to any questions that you have or Senator Durenberger has.

Senator MOYNIHAN. We thank you, sir.

We have yet another vote. I am going to recess. We will be back shortly. Senator Durenberger will be here as well.

[Recess.]

Senator MOYNIHAN. The committee will come to order again.

Thank you, Mr. Emery, for waiting for us.

Mr. EMERY. Yes, sir.

Senator **Moynihan**. Senator Durenberger, and I see Senator Warner has been able to join us.

Senator Warner, you will be happy to hear that earlier we had very powerful testimony from the Assistant Secretary of the Army for Civil Works to the effect that the Water Resources Act of 1986 is taking off, and after a 16 year stalemate and an 80 percent drop in budget, we have commenced work again.

Senator **Warner**. I thank the chair for the courtesy of that information. Unfortunately, I am due in the Armed Services Committee where the Secretary of the Army reports this morning, but I do want to get a little flavor of how we are doing here before I have to go.

Senator **Moynihan**. Now we are talking about a section in the bill that changed the way in which seaway tolls are collected and rebated, and Mr. Emery has just been testifying before us.

Mr. Chairman, would you wish to comment?

OPENING STATEMENT OF HON. QUENTIN N. BURDICK, U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Senator **Burdick**. Mr. Chairman, I have a statement for the record. If you will include that, that will be adequate for the moment.

Senator **Moynihan**. Yes, we will do that and Senator Stafford's statement will also be included at this point.

[The statements referred to follow:]

Opening Statement of Hon. Quentin N. Burdick, U.S. Senator From the State of North Dakota

Thank you Senator Moynihan. I want to reiterate a few of the points which I made when S. 2100 was introduced. This is a routine bill. It is not a controversial bill.

I intend to keep it that way, and report legislation to the Senate before Easter if that is agreeable with my colleagues. The members of this committee worked very hard in the 99th Congress to resolve cost-sharing and user fee issues with the executive branch.

The result was the Water Resources Development Act of 1986 which was achieved with broad bipartisan support and approved in the Senate by a vote of 84 to 2.

We are not going to retreat from the policies of that legislation. What we are trying to do is return to a system of regular biennial authorizations for the Corps of Engineers.

This means that those projects or programs which have been adequately reviewed in the last year and a half should go forward in this legislation.

Projects or proposals which have not been screened by the Corps of Engineers or which may be completed in another year should wait their turn.

Later today we will hear testimony from a panel of witnesses from my home State of North Dakota. They are here to reiterate what they said before this committee in a hearing in Bismarck in February of last year concerning the problems of bank erosion on the Missouri River.

Problems generated by the way in which the Corps of Engineers operates and regulates the Missouri River Reservoir System. Bank erosion is so severe that I requested GAO to review the problem.

They have done so in a professional and thorough manner. I have distributed copies of the GAO report here today, along with copies of the legislation which I have introduced in response to the findings of the GAO. The report makes it clear that the erosion which occurs along the Missouri River today is of a completely different character than the land erosion and accretion which occurred in the river before the corps build the mainstem reservoirs.

The report also makes it clear that if the corps were to develop these reservoirs today they would have to consider the erosion impacts of the dams in project development, something they did not have to do 30 years ago. Indeed, back then the corps had no reason to suspect that the new pattern of erosion which has taken place would result from their construction. The report outlines a number of options to remedy this situation.

I have elected to propose legislation which conforms with one of the proposals which GAO has outlined in its report. This legislation would make bank erosion measures a maintenance responsibility of the corps between Fort Peck and Gavins Point Dams. The costs of any such maintenance work carried out by the corps would be charged to all the project purposes of the Missouri River system.

This proposal recognizes that the erosion which occurs along the Missouri River system is a cost of doing business for the entire system. The costs of such work will be born proportionately by the direct beneficiaries of the system.

I am looking forward to the testimony of my fellow North Dakotans later today on this subject. I have a number of questions that I will submit to Secretary Page, and with that would conclude my opening remarks for this morning.

OPENING STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM THE STATE OF VERMONT

I am pleased to be here today to hear testimony on a number of water resources development proposals which are before the Subcommittee.

Most of the proposals which will be addressed today are contained in S. 2100 and S. 2101, the Committee leadership's and the Administration's water resources development bills.

S. 2100, as introduced by the Committee leadership, is a sound and relatively modest bill. As was stated during the introduction of that bill, it is our intention to keep this a responsible bill. In this regard, we look to our good friend and respected colleague, Senator Moynihan, to provide leadership and guidance in his role as the distinguished Chairman of this Subcommittee.

It is my hope that during these hearings, we will receive the information and justification we need to ensure that any water resources bill reported by this Committee during this Congress is sound legislation.

I would like to welcome all of our witnesses here today. I am especially pleased to welcome Mr. Robert Page, who is appearing before the Committee for the first time in his capacity as the Assistant Secretary of the Army for Civil Works.

Senator MOYNIHAN. Senator Durenberger?

Senator DURENBERGER. Yes, Mr. Chairman. I have a few questions largely for the record, and I appreciate your earlier indication that we can expand the record since we all know how important the seaway is to us.

Let me also say for the record that I appreciate the job that Mr. Emery has done in a very difficult situation in the seaway over the last several years.

But on this issue he and I have some relatively strong differences of opinion. I think for the record let me just begin, Jim, by asking you, we talked earlier about the port directors and where they may be these days, but in discussing your proposal with port directors and shippers on the Great Lakes, can you indicate how many of them have expressed support for seaway tolls and what the nature of that support might be?

Mr. EMERY. Well, first of all, the group that I pointed out, the Strategic Planning Group that was appointed by Secretary Dole, encompassed International Longshoremen's Association, governors, mayors, port directors, brokers, agents, the whole maritime trade. I could give you a full list of those people that were on that panel. They supported it in their final report to the secretary. I could give you the list of those people.

We do have letters from some port directors last year to the Appropriations Committee. Then it was deemed that it was not the appropriate place to change the legislation in the Appropriations Committee, but they were addressed in support to those people.

I think there will be testimony today from some people in support of that here. After I conclude there is——

Senator **Durenberger**. I was just interested in the issue of tolls. I only have one port in my whole State, but I also have the opportunity, serving on this committee, to see how our transportation system works in this country. It has always struck me as somewhat unfair to require the users of the seaway to pay 100 percent of the cost of maintaining the seaway while we have a——

Senator **Moynihan**. Shall we say Tennessee Tombigbee?

Senator **Durenberger**. Tennessee Tombigbee. You took the words right out of my mouth. Try to be a little more precise on just the toll issue. Have you got support from a number of the port directors for that?

Mr. **Emery**. I talked at length with your port director on our mission overseas. I think I will give you the correct reflection of his views. One, they want all tolls eliminated, Canadian and U.S. Part of the bill required the Secretary of State, in conjunction with the Secretary of Transportation, to begin negotiations to eliminate tolls on the system totally. That's their main objective.

Secondly, they want the tolls rebated on the U.S. side as they are. He then told me, he said, how it is operated now internally, he said, that's up to you and Congress and the administration.

That's exactly the point here. We are in favor of the rebates, and I want to make that very clear. There is an ad valorem that is assessed on value of cargo at U.S. ports, and that money goes to the Harbor Maintenance Trust Fund, which is the trust fund that the assistant secretary just spoke about. The Assistant Secretary of the Army Corps of Engineers said, "We support the seaway proposal."

In other words, they don't object to the tolls being rebated out of the Harbor Maintenance Trust Fund.

No matter how you look at it, I guess, the money is collected once and it is used twice. The money is collected from the payer of the tolls, comes into the Harbor Maintenance Trust Fund, is rebated, then the Harbor Maintenance Trust Fund finances our operations. We are saying, let's eliminate the one transaction, let us retain the tolls, and let the Harbor Maintenance Trust Fund still rebate.

We are using the same dollars, only in our judgment it will be more efficient to allow us to maintain our own revenue stream to work to increase trade and traffic. Gentlemen, I am very seriously worried about, not in my time perhaps, but 5 years or 10 years from now if budget systems continue as they are to domestic programs, and we continue to take hits, there will not be enough money left to maintain the seaway. We feel we can do that if we retain the tolls.

I think there is a little bit of confusion in the lakes that when we talk about toll retention we are saying let's put the tolls back on again. We are not saying that. The tolls are there. They have never been taken off. It is just the mechanism that was built into this bill in the way it is refunded, and then we have to go to the Harbor Maintenance Trust Fund.

Let me reiterate again that our budget, we took a $2 million hit in the first six months of operation in non- appropriations; we took an $800,000 hit in the 1988 budget; and another $500,000 hit in our proposed budget. We were already at a bottom line in trying to maintain a system that was responsive to the needs of the users of the system, including the ports, the shippers, the shipping companies.

I can't—I say I can't—the corporation can't sustain across-the-board cuts as they reflect in domestic programs and expect that we can maintain the seaway, capitally improve the seaway, and operate it on an extended basis, which many port directors want.

I think that's where we all agree, the port directors, with that conclusion, and we support their original two proposals.

Senator **Durenberger**. Mr. Chairman, I have a couple of other questions on my time.

Senator **Moynihan**. All right.

Senator **Durenberger**. The second question, Jim, you mentioned the issue of Canadian tolls. Do you think the elimination of Canadian tolls is a good or a bad idea?

Mr. **Emery**. I think it is a good idea. I'm not sure to what extent we are going to convince the Canadian government, although there is strong support on that side.

On the other hand, their government is very positive in that government corporations of Canada must fund their own way. But I think we had a good show of faith on the Canadian side when they appropriated $175 million outside of the toll revenue stream to fix up the Welland Canal.

I think it is a step in the right direction. Whether we are ever going to see a total elimination, I don't know. I think it is going to take a lot of negotiation, a lot of pressure.

Senator **Durenberger**. Again, referring to your statement about Public Law 99-662 and its requirements, one of the requirements in section 1406 was the consultation of the Secretary of Transportation, or the requirement that the secretary initiate the discussions with the government of Canada.

That also included a requirement that the Secretary of Transportation report to the Congress on the progress of those discussions they are taking. I wonder if, for the record, you would indicate how many times the U.S. and Canadian negotiators have met, who they are, what was discussed, when the department might submit its progress report to the Congress.

Mr. **Emery**. I am unfamiliar with that, Senator. I don't know. I think that question probably should be directed to the Secretary. I have no idea.

Senator **Durenberger**. You do not have a representative that is part of the negotiations?

Mr. **Emery**. No.

Senator **Durenberger**. I am asking you this question because of some testimony that is coming up after you. How many employees have you had to lay off since the adoption of the Water Resources Development Act?

Mr. **Emery**. We haven't laid any employees off. When I came into this job, we did do some retrenchment, we eliminated some positions, we consolidated some jobs. Again, I would say this was all in conjunction with our union who, again, we have excellent working relationships with. We established a Trade and Traffic Department. We put together a five-year maintenance and capital construction program that was nonexistent in the corporation, and we have just, because of tight management control and control of our finances, we were able to do more with our dollars and more efficiently and effectively than we had in previous years.

Senator DURENBERGER. Mr. Chairman, I thank you for that opportunity.

Senator MOYNIHAN. I thank you, sir.

Senator DURENBERGER. Mr. Chairman, I have a letter from Congressman Dan Rostenkowski to the Secretary of Transportation relative to this issue and without objection, I would like it included in the record.

Senator MOYNIHAN. So ordered.

[The letter referred to follows:]

DAN ROSTENKOWSKI
8TH DISTRICT, ILLINOIS

COMMITTEES:
CHAIRMAN
COMMITTEE ON
WAYS AND MEANS

CHAIRMAN
JOINT COMMITTEE ON
TAXATION

Congreſs of the United States
Houſe of Repreſentatives
Washington, D.C. 20515

June 20, 1988

Honorable James H. Burnley, IV
Secretary of Transportation
400 7th Street, S.W.
Washington, D.C. 20590

Dear Mr. Secretary:

I am writing to urge you to direct the appropriate officials of the Department of Transportation to pursue aggressively negotiations with Canada aimed at the elimination of all tolls on the international Great Lakes and the St. Lawrence Seaway . Under the provisions of The Water Resources Development Act of 1986 (P.L. 99-662), discussions aimed at reducing or eliminating the tolls are to begin by November of this year. I presume that the necessary preparations for these talks are underway, and I would welcome any information you could provide to that effect.

As you might know, I was heavily involved in enacting the revenue title of P.L. 99-662 which calls for the rebate of the U.S. tolls from the Harbor Maintenance Trust Fund, into which the tolls are to be deposited upon collection. In the time since enactment, I have consistently opposed proposals which would permit the St. Lawrence Seaway Development Corporation to regain its access to those tolls. One of the reasons for my position is the belief that having the Corporation funded through appropriations permits the United States to take a stronger position in favor of the elimination of tolls altogether.

Thank you for your consideration. For your information, I am sending a similar letter to the Secretary of State.

With best personal regards, I remain

Sincerely,

Dan Rostenkowski

Dan Rostenkowski
Member of Congress

DR/ts

Senator **Moynihan**. Mr. Emery, we very much appreciate this. The argument goes both ways, of course. We are going to try to produce a resolution. There is an elemental fact which is, if you could have any confidence in budgets rising, why the present arrangement might look promising to you. We have a whole series of trust funds around the Executive right now in which revenues are coming in and not being paid out. They are using it as a form of deficit control, and I think that's a legitimate concern.

We thank you very much.

We would like to hear now from a panel of proponents of the seaway toll retention. First, Mr. John Harris, who is a Special Assistant to the President of the American Federation of Government Employees, and Mr. Salvatore Pisani, who is the Deputy Port Director for Port Development of the Ogdensburg Bridge and Port Authority.

Mr. Harris, you are listed first, so if you will speak first. I see there is a statement by Kenneth Blaylock who is National President of the AFGE.

Senator **Durenberger**. Mr. Chairman, if I might, one of the witnesses who was going to be on this panel representing the Great Lakes shipping community, Vera Paktor, has the flu today, she has a statement that I would like be made part of the record.

Senator **Moynihan**. We learned just at 10:15 that she couldn't make it.

Senator **Durenberger**. Might her statement be made part of the record?

Senator **Moynihan**. I would be happy to do it. I wish her a quick recovery. [See p. 160.]

Senator **Moynihan**. In that case, Mr. Harris, we will proceed with you first.

STATEMENT OF JOHN HARRIS, SPECIAL ASSISTANT TO THE NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, ACCOMPANIED BY TERRY JORDAN, PRESIDENT, LOCAL 1968, AFGE

Mr. **Harris**. Mr. Chairman, my name is John Harris. I am the Assistant to the President of the American Federation of Government Employees.

To my right is the President of our Local 1968, Terry Jordan, who has accompanied me today to answer any questions you might have. He is the local president of our Saint Lawrence Seaway local from Massena.

Senator **Moynihan**. That's right.

Mr. **Harris**. We are grateful that you invited us to testify on this issue and especially grateful for your support of our union of Federal workers and of the seaway workers in particular. I know you have been up there and visited with them, and we have given you a hat. We ask you to come again, and we will give you another one.

The mission of the corporation is to maintain two of seven locks that link the Great Lakes to the Atlantic Ocean.

If I may, I have a written statement, and I'll just submit that and I'll just summarize.

Senator **Moynihan**. Please. We will put that in the record.

Mr. **Harris.** Those locks, that system of locks and the Saint Lawrence Seaway that maintains it is one of the few public corporations of the Federal Government, one of which the workers that we represent have been very proud to work for. Their pride owes in large part to the nature of that corporation, and to the cooperative relationship that they have built with that seaway management.

It was under the administration of President Kennedy in 1962 that that cooperative relationship began, faced at that time with very costly capital expenditures to refurbish the locks. The workers themselves went to management and proposed concessions, changes in work rules to allow the system to maintain its self-sufficiency.

It was an unusual situation for the Federal Government to bargain with workers.

Senator **Moynihan.** If I can just interject, that was Executive Order 10988, and I wrote it.

Mr. **Harris.** We understand that. It is still superior, in fact, to the law that we have now, and perhaps with your help we can change the law we have now.

Senator **Moynihan.** Another hearing.

Mr. **Harris.** That bargain that was cut between the workers and the Saint Lawrence Seaway management of the Federal Government was a very good bargain for both of us, and it has stood us well for all those years since.

To our workers, proud of that system, proud of the work that they do, the independence and the integrity of the system is a part of that bargain that was cut 25 years ago. They promised to keep the system working and profitable, and in return they expected the seaway to treat them fairly. It's a partnership, a partnership in which the workers have as much interest in the success of the corporation as management, one in which these workers have voluntarily sacrificed pay raises for the last six years, are going to be taking no pay raises for the next two years in order to help build the system up with its capital and help it cope with shortfalls in the wake of the 1982 recession.

So I think you can understand that when the Water Resources Development Act of 1986 took effect and took away the source of the revenue on which they had cut that bargain, they felt betrayed.

We understand that Congress did not transfer the tolls of the seaway out of malice to the seaway system or malice to our workers.

Senator **Moynihan.** No, no.

Mr. **Harris.** We know that it was part of a public policy decision to rebate the cost of the tolls to the ships who fare the locks. We support the provision to rebate those tolls because, simply, it will encourage shipping in the seaway system, and that is in our own interest. We wonder whether maybe those rebates are really encouraging landing in American ports. Our people tell us that most of the ships that fare through the locks do not fly American flags. Many, if not most, do not land in American ports.

We suggest, therefore, if you want to encourage landing in American ports, perhaps you should focus the rebate of the tolls upon ships that land in American ports.

I notice that the Senator from Minnesota has departed, but if I may use a parochial example, if, for example, the tolls were to be rebated to ships that landed in Duluth rather than Thunder Bay, he might find more ships landing in Duluth.

We believe that the rebate program if it is defined to carry out its express intent would be good, and is good public policy and should be supported by the taxpayers.

Our single request is in support of the seaway system of the corporation, that the tolls themselves should be retained and returned to the corporation for its management.

The seaway has been a responsible public corporation for over 25 years, and we want to keep it that way. It has not been a burden to the taxpayer.

Senator MOYNIHAN. No, it has not.

Mr. HARRIS. We want to keep it that way.

Senator, that's the conclusion of my testimony.

Senator MOYNIHAN. That's pretty straightforward.

Mr. Jordan, would you like to add something to that?

Mr. JORDAN. Only, Mr. Moynihan, we would like to again have the employees of the Seaway Corporation wish you a happy birthday.

The only thing that I would have to say is that in the six years that I have been employed by the Saint Lawrence Seaway and been able to deal with Mr. Emery in the last four is that we have such a good working rapport. Knowing that your constituents in northern New York are suffering hard times right now, I just feel very honored to work for the man and to be able to do the job for the seaway that we do, and knowing that we do the best we can for the shippers that do use the seaway.

I just feel that any help that you would be able to show my people back in Massena would be greatly appreciated. I would like to be able to go back and tell them that I have spoken with you personally, and I would like to take that back to them.

Senator MOYNIHAN. Surely do. We will see when the ice breaks up.

Mr. JORDAN. Yes, sir.

Senator MOYNIHAN. That's quite a chapter of labor-management relations in the Federal Government. I think you should all be very proud of that. As very few other activities, the authority works as if it were a private enterprise. You know, it has to balance its books as the bottom line. The cooperative partnership that Mr. Harris described is very heartening to those of us who believe in that. I wish more people would pay attention to it.

I think that gives you more than the ordinary claim to be listened to because you have a record of seeing the common interest, the shared interest up there, and representing it.

Mr. JORDAN. Absolutely.

Senator MOYNIHAN. Thank you, Mr. Jordan.

Mr. Pisani.

STATEMENT OF SALVATORE L. PISANI, DEPUTY PORT DIRECTOR FOR PORT DEVELOPMENT, OGDENSBURG BRIDGE AND PORT AUTHORITY

Mr. PISANI. Thank you, Mr. Chairman.

As a representative of the Ogdensburg Bridge and Port Authority in Ogdensburg, New York, I would like to thank you for the opportunity to testify before this subcommittee.

The port of Ogdensburg is the only United States port on the Saint Lawrence Seaway. We operate on revenues generated from our international bridge, airport, railroad, and various other port activities.

Many of our successes in economic and port developments are attributed to our ability to act quickly and responsively to our clients. As a self-sustaining entity, our authority enjoys the advantages of using earned revenue to implement improvements to the transportation network of northern New York.

We believe that the Saint Lawrence Seaway Development Corporation must have that same ability. As guardians of the Eisenhower and Snell Locks, they have the enormous responsibility of insuring that these gateways to the Great Lakes continue unimpeded.

The Development Corporation has performed an exemplary job over the years in controlling traffic during the navigation season. Their operational and maintenance programs ensure that the fleets of the world can depend on a safe and efficient transit.

The Saint Lawrence Seaway Development Corporation is to be commended for their aggressiveness in promoting the use of the seaway and for the work that its administrator and staff have done to hold the line on seaway tolls and to keep this gateway to America's heartland competitive.

These efforts have resulted in the study increase of cargo tonnage moving through the seaway and a maintenance and repair program to ensure an uninterrupted flow of ships through the system.

As a port that operates within the system, we strongly support the Development Corporation's appeal to operate as a self-financing entity, this being through the retention of tolls.

Our authority has witnessed and benefited by their aggressive marketing efforts. These efforts can only be enhanced by giving them the incentive to carry out programs that will encourage more traffic.

Unlike the East Coast, Gulf and West Coast maritime gateways, the Saint Lawrence Seaway and Great Lakes have the distinct disadvantage of user fees.

We need the corporation to have the ability to keep a lid on the escalating Canadian tolls. Toll retention would restore the corporation's negotiating position, which has been eroded by the appropriate status.

We know that this organization is doing a fine job. They are a valuable asset not only to U.S. ports but to Canadian ports as well.

Their request is justifiable, well-founded, and has the complete support of the Ogdensburg Bridge and Port Authority.

Again, thank you very much for this opportunity to testify.

Senator MOYNIHAN. We thank you, Mr. Pisani, Mr. Harris, Mr. Terry, for coming all the way down here to be with us.

Mr. HARRIS. Thank you, sir. It has been our pleasure.

Senator MOYNIHAN. It will be our pleasure to come up and visit you in June.

Mr. HARRIS. We would love to have you come up, sir.

Senator **Moynihan**. Mr. Chairman, did you have any questions?

Senator **Burdick**. It looks like we have a little bit of a problem here. There could be some joint referral here, and that could create some problems.

I notice from your testimony that the Water Resources Development Act of 1986 took the sole source of revenue away. That's where the problem is, is it not?

Senator **Moynihan**. That's right, if I can say.

Mr. Harris, you can agree or disagree.

Mr. **Harris**. Yes. Well, I heard the allusion by Mr. Durenberger that there was possibly a parliamentary issue here. I understand, Mr. Moynihan, you are also on the Senate Finance Committee.

Senator **Moynihan**. He and I are both on the Finance Committee.

Mr. **Harris**. I would hope that that could be worked out then.

Senator **Moynihan**. If we can reach agreement on what we want to do, we'll do it.

Mr. **Harris**. Well, if we can be of any help to that, let us know.

Senator **Moynihan**. Well, you have been. You have been very thoughtful in your testimony.

Senator **Burdick**. Mr. Chairman, I hope you get this straightened out because I have some wheat to sell.

Senator **Moynihan**. Gentlemen, thank you so much.

Terry, thanks for coming down, and thank Jim Emery. We will get to this. We have to do it.

We are now going to hear from Mr. Brendan O'Malley who is Assistant Director of the Port Department of the Port Authority of New York and New Jersey.

Mr. O'Malley, we welcome you to the committee. I think we have not heard you before, have we?

STATEMENT OF BRENDAN O'MALLEY, ASSISTANT DIRECTOR, PORT DEPARTMENT, PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Mr. **O'Malley**. Last year I believe I was before one of the committees. Maybe it wasn't this one, Senator.

Senator **Moynihan**. Anyway, you are very welcome.

Mr. **O'Malley**. Thank you, Senator.

Senator **Moynihan**. You might put your statement in the record and tell us what it is you want us to hear.

Mr. **O'Malley**. I would also, on behalf of the City and the State of New York, Senator, wish you a happy birthday. I am delighted to have this occasion. One more day and you would have been born on St. Patrick's Day, which would have been wonderful. But anyhow, happy birthday.

I am Brendan O'Malley, Assistant Director of the Port Department of the Port Authority of New York and New Jersey. The Port Authority is grateful for the privilege and opportunity of being heard here this morning on this legislation to authorize the Corps of Engineers to construct various projects for harbor improvements and other purposes.

We wish to commend the distinguished members of the subcommittee for introducing this legislation that returns the process of authorizing new Corps projects to a regular timetable.

The Port Authority was established over 65 years ago by compact between the States of New York and New Jersey to develop transportation facilities and to promote the commerce of the port.

As the chairman fully knows, port commerce is an essential part of our region's economic life. From 1984 to 1986, the port experienced three consecutive years of record volumes in foreign oceanborne cargo, with a 1986 volume of 13.8 million long tons. The New York-New Jersey port generates $14 billion annually in economic activity. It is the underpinning for 200,000 jobs and billions in income and taxes. Attention to the port infrastructure is important to preserving and enhancing this benefit to the region and the Nation.

Mr. Chairman, we wish to thank you for your critical support of the New York Harbor Collection and Removal of Drift Project. This project has proven to be the most effective strategy for reducing navigational hazards.

As you know, the reminders of our pre-containerization history, the old wharves and finger piers are in decrepit condition and are a major source of the drift problem. The Corps has estimated that almost 18,000 commercial, public, and recreational vessels collide annually with drift, causing damage to propellers, shafts and hulls. In addition, the average annual repair costs and other economic losses for 1987 were estimated by the Corps to exceed $48 million.

Senator MOYNIHAN. That's a lot of money.

Mr. O'MALLEY. Yes, sir, it is.

Unfortunately, in prior years the project was delayed due to rising costs and annual budget restrictions. The legislation now being considered will, we believe, help to assure the full potential of cleanup work. As under the current law, the non-Federal share of the project is one-third which, when added to the associated repair work that is done after the Federal work is over, becomes more than one-half of the total project cost, and sometimes even exceeds one-half of the total project cost.

The Port Authority supported actively the passage of the Water Resources Development Act of 1986 and committed itself to the successful implementation of the goals. We negotiated and executed one of the earliest local cooperation agreements to implement projects authorized by that act, and we committed to pay the local share of the Kill Van Kull/Newark Bay and Arthur Kill projects. The Kill Van Kull/Newark Bay project is estimated to cost $50.8 million and is currently underway.

Our interest and our commitment are well established and will always be there.

Based on experience in working with the Corps on this project, we have concluded that certain adjustments and corrections should be made in this partnership that now exists between the Federal Government and local sponsors like ourselves. We are not now proposing major changes in the principal cost-sharing, environmental policy or the fundamental water resource reforms that we all worked so hard in 1986 to achieve, but we do have some suggestions which we feel would create a more equitable partnership between the Federal Government and ourselves.

One of the aims of the 1986 act, with its concept of a partnership, was to reduce costs, time delays and redundancy in the environmental permit and review processes. As you are aware, the Corps, prior to undertaking a Federal dredging project, under the National Environmental Policy Act, assesses project impacts and non-Federal investments as well.

Therefore, we submit that the non-Federal interests should not be required to obtain additional and separate Section 103, 401, and 404 permits and Coastal Zone Management consistency to dredge access channels and berths.

Since the Federal work already covers this, we suggest that the Federal work should apply, and we shouldn't have to redo it after they are done.

Senator MOYNIHAN. That's very clear.

Mr. O'MALLEY. Thank you, sir.

One of the most serious issues facing the port industry today is the issue of the disposal of our dredged material. Without an annual dredging program in the Port of New York we would soon have to close that port. Disposal sites or facilities for handling dredged material have generally been provided by the Federal Government as a national benefit.

We believe, therefore, that the disposal of dredged material has been and should be recognized as a national issue, the solution for which we believe requires a continuing Federal role.

We, therefore, recommend that the cost of disposal facilities for dredged materials should be considered part of total project cost under Section 101 of the Water Resources Act and thus become a shared Federal/non-Federal cost.

We are grateful that the subcommittee has provided that the costs of utility relocations borne by the non-Federal sponsor shall be credited toward the required ten percent under Section 101 of the act.

We also suggest that the Corps be directed to enforce the requirement already contained in Section 10 permits which requires utilities to relocate their equipment at their expense when it obstructs an authorized project. We feel that the Federal Government has the existing authority and ability to enforce existing requirements under the doctrine of navigational certitude and that navigational projects are in the national interest justifying the exercise of this authority. This would also relieve the non-Federal sponsor, ourselves in this case, to enforce Federal permit requirements.

In addition, Mr. Chairman, present Corps procedures cause the non-Federal sponsor to lose interest on money contributed under the cost-sharing provisions of the 1986 act. The Antideficiency Act prohibits the Corps of Engineers from awarding a construction contract until non-Federal funds are deposited in the U.S. Treasury. The Corps does not pay out these funds until several months later, thus resulting in a loss of interest to the non-Federal sponsor.

The local government bodies which are local sponsors are no less conscious of their responsibility to protect public funds than the Federal Government is or should be. We suggest that the Corps be exempted from the Antideficiency Act and that the non-Federal sponsor be required to make its contribution at the time a contractor's bill is payable. This will permit the non-Federal sponsor to manage the public funds entrusted to them in a responsible and prudent manner.

The 1986 act also authorizes the non-Federal interest to levy port or harbor dues. However, the provisions of the act impose excessive restrictions on our ability to implement such collections.

We are not requesting that you reopen the local user fee issue at this time but suggest that in the future Congress does need to adjust the requirements so that we can come up with an appropriate and realistic way to raise the money that we will perhaps be interested in raising once the construction projects are completed. Right now with the language in the act, we don't think it would be possible.

Finally, Mr. Chairman, we appreciate your provision for the Corps to determine harbor development project benefits received by the Armed Forces and which would be paid by the Federal Government. Since military benefits are difficult to quantify as a proportionate share of harbor projects, we urge the subcommittee to consider a fixed percentage offset for local sponsors when the Federal Government itself is a project beneficiary.

On behalf of the Port Authority, I thank you for the opportunity to present to you some of our views this morning, Mr. Chairman. We have filed a more lengthy written statement for the record.

Senator MOYNIHAN. Thank you, Mr. O'Malley. We thank you for your invitation to members of the committee to tour the port which has a lot of pleasures to it, not necessarily always in February or March.

Could you add one detail. The doctrine of navigational servitude?

Mr. O'MALLEY. That is a doctrine that provides that if you obstruct a federally maintained and operated waterway, you have an obligation to remove it at your cost. Under the section 10 permit the——

Senator MOYNIHAN. Is that just a legal——

Mr. O'MALLEY. That is a legal term of art. I am not a lawyer, Senator, but it is a legal term of art that provides that you should always give way in a channel to the navigational interest. If you have obstructed the passage of that channel with a utility of some kind, a large pipe, for example, and that channel has to be deepened, then you have an obligation to remove that large pipe or sink it deeper.

Senator MOYNIHAN. Clear, very clear.

Those are four very clear suggestions, some of which are immediately attractive and inviting. We thank you for coming down. This was very supportive, very helpful. It is not just the Port of New York that is involved, it is harbors and ports all over the country.

Give our regards of the committee to Mr. Berger, your chairman, and to the other employees. Thank you again for your invitation.

Mr. O'MALLEY. I hope to see you tomorrow in the parade, Mr. Senator.

Senator MOYNIHAN. Well, we have the Grove City. We may not be there, overriding precedent.

Senator BURDICK. Do the Irish take over?

Senator **Moynihan**. The Irish take over tomorrow. Have no fear, it is only for one day.

We now have a North Dakota panel. Our audience will not be surprised if our distinguished chairman has requested the opportunity, his right in any event, to preside on this occasion.

Gentlemen, we welcome you. I will leave you to your friends.

Senator **Burdick**. I want to welcome you all here. You are leaders in North Dakota water development for the most part. I am pleased to welcome you.

You can proceed in any order you wish. Do you have an order for yourselves?

STATEMENT OF DAVID SPRYNCZYNATYK, DIRECTOR OF ENGINEERING, NORTH DAKOTA STATE WATER COMMISSION

Mr. **Sprynczynatyk**. Yes, we do, Senator Burdick.

Senator **Burdick**. Proceed.

Mr. **Sprynczynatyk**. Thank you.

I am David Sprynczynatyk, Director of Engineering for the North Dakota State Water Commission. I appear today on behalf of the State Water Commission and on behalf of the North Dakota State Engineer.

The commission is comprised of the Governor of North Dakota, the Agricultural Commissioner and seven citizen appointees. The commission, first established in 1937, is responsible for the management and development of the water resources of the State.

Today your subcommittee is considering S. 2100. Of particular interest to North Dakota is Section 302, which establishes a technical resource service for the Red River Basin in both Minnesota and North Dakota.

The Red River Basin has been plagued with flood problems for many years. Since 1950, seven major floods have occurred in the basin. During those floods, over $1 billion in damages, flood fighting costs and recovery operation expenses have occurred. This figure would have been larger had it not been for actions by Federal, State and local interests.

Efforts toward flood damage reduction are ongoing, but considerable effort is still necessary. A Technical Resource Service would provide planning and technical assistance in order to accelerate State and local efforts toward flood plain management, and efforts toward flood control projects that would help reduce damages along the Red River.

By utilizing the knowledge and experience within the U.S. Army Corps of Engineers, the two States of North Dakota and Minnesota and local entities would be able to better develop and manage the water resources of the Red River Basin and reduce future flood damages.

Today I wish also to testify in support of the legislation introduced by Senator Burdick, S. 2158, to amend the authority of the Corps of Engineers with respect to bank stabilization and shoreline erosion along the Missouri River. The legislation would make the responsibility for streambank protection a part of the project purposes of the Missouri River-Pick Sloan Plan.

For years the State of North Dakota has worked toward a solution to the Pick Sloan induced erosion problems of the Missouri River. The erosion problem, caused largely by the release of clear silt free water from the Garrison Dam, was immediately apparent to the landowners along the Missouri River. In 1960, these landowners presented the problem to the Corps of Engineers. As a result, an authorization for the construction of specific bank stabilization projects was obtained from the Congress.

In addition to accelerated erosion due to the releases of clear silt free water, erosion also occurs because of fluctuations in river levels resulting from the production of hydroelectric power during peak use periods. Thus, the open river reaches between the large dams have become conduits moving the water from one reservoir to the next, and eroding valuable lands between the reservoirs.

Prior to the construction of the dams on the Missouri River, erosion did occur; but there was also an accretion process which restored land in many areas. Studies have shown that this accretion process no longer occurs because of the existence of the reservoirs and because of the clear water released from those reservoirs. On February 11, 1987, a detailed report explaining these problems was presented to the Senate Environment and Public Works Committee at its field hearing in Bismarck, North Dakota.

The Government Accounting Office recently released its evaluation of erosion problems on the Upper Missouri River. The GAO evaluation shows that the erosion problem is ongoing, and different today than before the large reservoirs were built. It also shows that North Dakota is losing an average of 71 acres per year to this erosion. This loss includes agricultural land as well as valuable woodland. With the loss of over 500,000 acres of rich Missouri River bottom land to the Garrison Reservoir and the Oahe Reservoir, we must do everything possible to protect our remaining riparian land.

The GAO evaluation is representative of the situation existing along the Missouri River. The evaluation outlines the problems of the past and depicts the problems that exist today. The State of North Dakota concurs with the GAO evaluation. It is also important to note that the Department of Army has concurred with the evaluation as well.

In conclusion, we support the establishment of the Technical Resource Service for the Red River Basin and we also support the proposed legislation for bank stabilization along the Missouri River. We ask that the subcommittee favorably consider the legislation for these proposals as well. We also ask that once these proposals are passed into law, that every effort be made to adequately fund them.

Thank you for the opportunity to appear here today, and if there are any questions, I'd certainly be glad to try to answer them.

Senator BURDICK. I believe I'll defer the questions until all the witnesses have been heard.

Mr. SPRYNCZYNATYK. I will be followed by Mr. Ivan Boe.

STATEMENT OF IVAN BOE, VICE CHAIRMAN BOMMM JOINT WATER RESOURCE BOARD

Mr. Boe. Mr. Chairman, and members of the committee, my name is Ivan Boe, and I farm and ranch near Turtle Lake, North Dakota. I am the Vice Chairman of the BOMMM Joint Water Resource Board. The BOMMM Board is a joint water board organized under the laws of the State of North Dakota and consists of members of the five county water resources districts adjacent to the Missouri River in the reach from the Garrison Dam downstream to the headwaters of the Oahe Reservoir. These counties are Burleigh, Oliver, Mercer, McLean and Morton.

The BOMMM Board was organized in 1982 to promote the protection of the land adjacent to the Missouri River which has suffered great net loss due to river bank erosion since the installation of the Garrison Dam.

The Garrison Dam, built in the 1950's reached operating levels in 1965, and completely changed the character of the Missouri River in our area. The Garrison Dam releases are manipulated for the greatest advantage to power generation and downstream—Sioux City to St. Louis—flood control and navigation.

The clear water released from the dam has a high capacity to dissolve and carry away the soil of the banks. No accretion of useful land is occurring as was the case along the natural river before the Garrison Dam was installed. Thus, the net loss of land.

Bank erosion and loss of land is quite severe during the winter months when large releases are made for power generation. Summer erosion can vary from nothing to disastrous depending on the amount and timing of releases.

Nineteen seventy-five was one of those disastrous years when high precipitation in the upper Missouri watershed and perhaps poorly managed releases caused large land losses.

We are and have been very disturbed about the loss of the finest land in our region. We are also very concerned about the loss of the wooded areas along the river, some of which dates back hundreds of years and which has provided unique scenic beauty and wildlife habitat.

A more complete story of the nature of this altered river and the net loss of land was presented to your committee at a field hearing in Bismarck on February 11th, 1987.

The BOMMM Board is, therefore, very appreciative of the legislation we are considering here today. It will permit the United States Army Corps of Engineers to utilize maintenance funds to protect the affected land. This approach is exactly that which BOMMM and other local organizations and landowners have long advocated. We have always felt that it is fundamental that any project such as the Pick Sloan and its Garrison Dam must also be responsible for the adverse effects of the project. This bill recognizes this basic fundamental and provides for correction of this long and agonizing problem.

We must again remind you that here is great urgency in enacting this legislation. Some irreplaceable loss of valuable land is occurring every year and disastrous losses will again occur in high precipitation years. There will be unavoidable lags in enacting this legislation and installing protective works, but we sincerely hope all this can be accomplished as quickly as possible to prevent further losses.

Again, my thanks to you for providing me the opportunity to testify in behalf of this very important legislation.

If it would be beneficial, we have an extra copy of the testimony that was given on behalf of our board in Bismarck last February. Thank you.

Senator BURDICK. That will be made part of the file.

There are two remaining members from the North Dakota delegation. Would you mind if we suspend for just a moment while I recognize our good friend the Senator from South Dakota, Larry Pressler?

OPENING STATEMENT OF HON. LARRY PRESSLER, U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator PRESSLER. Thank you, Mr. Chairman. I want to commend you and the witnesses from North Dakota, a neighboring State. I want to help out any way I can.

I am strongly supporting Senator Burdick's efforts on this proposed amendment to S. 2100. I commend you for holding these hearings because I think they bring some facts before us. I apologize, this morning I have three committees going at the same time, if you can believe that. I don't know what that says about our organization here.

Let me also say that my former colleague from South Dakota, Senator Abner, worked for several years in an effort to pass an omnibus water bill. That bill was finally passed in 1986. Jim Abner's efforts on that water bill represented one of the great legislative accomplishments of the 1986 session.

My home State of South Dakota, as has been mentioned, has four mainstream dams on the Missouri River. These dams provide many benefits to South Dakota and other States in the area. They also create some problems.

Our chairman, Senator Burdick, the chairman of the committee, has taken a leading role in working to address one of these issues, river bank erosion. The small community of Pollock, South Dakota has lost a large portion of its city park to bank erosions. Many other communities such as Peer and Springfield have faced the problems created by the operation of the dams of the Missouri River. Farmers and ranches along the river have suffered similar losses.

For years I have worked to get the Corps of Engineers to address this problem. Unfortunately, little action has been taken. For this reason, I strongly support Senator Burdick's proposed amendment to S. 2100, and look forward to working with him on this issue and with you fine witnesses.

I want to thank you all because I think you are speaking very well for North Dakota and for the United States. Thank you very much.

Senator BURDICK. Thank you, Senator.

Now we will hear from Mr. Eiken.

STATEMENT OF DOUGLAS K. EIKEN, DIRECTOR, NORTH DAKOTA PARKS AND RECREATION DEPARTMENT

Mr. EIKEN. Mr. Chairman, I am Doug Eiken, Director of the North Dakota Parks and Recreation Department. I am here to testify in support of your legislation with respect to bank stabilization and shoreline erosion issues on the Missouri River in North Dakota.

I feel I am well qualified to address these problems as our department has recently completed two detailed assessments of recreational issues along the river, and we have also been working with the Corps of Engineers on serious erosion problems within one of our State parks. In each of these efforts, the department has identified problems associated with the accelerated loss of recreational and forested lands along the river system. These problems seem to be growing because of the fluctuating flows and the fluctuating water levels in the river.

To give an example of the complexity of this issue, I will relate an incident about Fort Abraham Lincoln State Park which lies at the confluence of the Missouri and Heart Rivers. We have been trying for several years to invoke an existing Corps authority—I believe it is section 14 authority—to address a problem with erosion within the park, similar to what Senator Pressler described in South Dakota.

The standard response that we get from the Corps is that they are not specifically responsible for the problem, even though our own State Water Commission engineering staff has agreed with us, that the regulation and management of the river is the primary cause of this problem. It has been obvious to us and to others that the regulation of the reservoir is the major factor in our erosion problem and other erosion problems along the river.

For your information, I have enclosed a final draft copy—I didn't have the final copy printed yet—of a study that we did. We brought together recreationalists, water users, landowners, State and Federal officials to address issues along the Missouri River. There is a good summary of the history of the river problem on pages 1 and 2. But I think the significant thing about the study is that all who participated in the study agreed that selective bank stabilization is needed on the river. It is something that can be supported by the North Dakota recreational groups, the environmental organizations in North Dakota, and by the landowners, and that we all are unified on this, that this is a problem that needs resolution.

Any objective assessment of the river system as it now exists would come to the same conclusion that we have, that regulation of the river has accelerated this problem. Without some type of bank stabilization or easement program, this treasured State and national resource will be destroyed. A program to address this issue is long overdue and deserves the support of this committee.

Upon the adoption of this legislation, I would ask that the U.S. Army Corps of Engineers take whatever steps are necessary to address these problems, concentrating initially on areas including Fort Abraham Lincoln State Park which have already been identified by various reports of the State Water Commission.

With your support, the involvement of the U.S. Army Corps of Engineers and input from State and local officials, I feel this critical natural resource issue can be satisfactorily resolved to everyone's benefit.

I would like to thank you for giving me the opportunity to testify before this committee. Thank you.

Senator BURDICK. Thank you.

The next witness, Mr. Feyereisen.

STATEMENT OF PAUL FEYEREISEN, PRESIDENT, MISSOURI RIVER ADJACENT LANDOWNERS ASSOCIATION

Mr. FEYEREISEN. Mr. Chairman, my name is Paul Feyereisen of Bismarck, North Dakota. I am the President of the Missouri River Adjacent Landowners Association. The association is an organization of over 130 landowners owning land adjacent to the Missouri River between the Garrison Dam downstream to the headwaters of the Oahe Reservoir. The Missouri River Adjacent Landowners Association was organized in 1983 to work in harmony with the State and Federal Government in meeting the objectives of our organization.

Some of our objectives are to protect the present woodlands as they are to encourage the outdoor recreationalists use of the river such as canoeing, fishing, boating, camping, etc.; to preserve the river as a scenic, free-flowing and wild river; to preserve and protect the adjacent lands from bank erosion; and to cooperate with both the Federal and State Government in meeting the above objectives.

The Missouri River Study developed in 1987 by the National Park Service, the North Dakota Parks and Recreation Department, other river interest groups, and the Missouri River Adjacent Landowners identified major issues confronting the different interest groups. Prevention of river bank erosion was identified as the landowners number one concern.

The present fluctuations of stream flows caused by water releases at the Garrison Dam contribute greatly to the erosion problem. During the winter when the river freezes, undercurrents can take several feet of river bank. Also in the spring during the spring thaw, the ice will take small and large trees along with soil dropping the debris in the flowing river.

In the areas of the river where the United States Army Corps of Engineers has stabilized the river bank, little or no erosion has occurred. My own experience in owning nearly one mile of river frontage verifies this. Before the bank was stabilized several acres per year were sometimes lost. Each spring we would walk out to the riverbank and express surprise at the vast damage which occurred in just one winter. The largest cottonwood tree on our property, over 15 feet in circumference and perhaps a couple of hundred years old, stands only a few hundred feet from the river. Was that the tree that was there when Lewis & Clark traveled up the river? What year was this tree going to disappear into the river? Now we feel fortunate and grateful for having this section of the river bank stabilized.

The landowners stand ready to cooperate with the Federal and State Government in signing easements to continue the work the United States Army Corps of Engineers started several years ago. New areas with high erosion potential, along with maintaining the existing stabilized areas, is of the greatest concern to the landowners. We are ready to cooperate in every way possible to protect the present beauty of the Missouri River. Time is of essence.

Our thanks to you for providing me the opportunity to testify in behalf of this important legislation.

Senator BURDICK. Thank you very much.

First, let me say that I welcome your support for S. 2158, the legislation I have introduced to make bank stabilization and maintenance the responsibility of the Corps of Engineers.

As I have stated earlier, the need for an objective review of the problem was made clear to me at this committee's hearing in Bismarck in February of 1987. Now that GAO has made its report, and just as significantly, Army has agreed with it, we can move ahead to resolve the problem.

Mr. Sprynczynatyk, could you give me some idea of the type of technical assistance you expect the Corps of Engineers to provide under the Red River provision in S. 2100?

Mr. SPRYNCZYNATYK. Yes, sir. Over the years the Army Corps of Engineers in the St. Paul District has developed a tremendous amount of expertise in the area of water management, hydrology and hydraulics. What's happened is that recently the greater efforts for developing flood control projects has been at the local level.

What we would expect to be able to do is to call upon the technical expertise of the Corps of Engineers in helping the two States and the local county governments analyze and develop projects to provide flood control. For example, right now there is a dam being built in Steel County in North Dakota known as the Beaver Creek Dam. We were able to work with the State of Minnesota in analyzing it. For projects similar to this one, we would like to be able to call upon the Corps of Engineers as well to help analyze the hydrology and hydraulics.

Other areas are in need of flood plain management data in order to either protect structures that are there or to prevent work from being done that would result in flood damages in the future. Again, the Corps has a lot of experience and expertise in the area of water management as it relates to the Red River, and we would like to call upon it.

Senator BURDICK. I presume they have some of that data in the file right now, haven't they?

Mr. SPRYNCZYNATYK. Yes, sir, I believe they have a lot of that data. It's just a matter of being able to tap it.

Senator BURDICK. Mr. Boe, in their report on the Missouri bank erosion, GAO indicated that they believed that the worst of the erosion was in the past, that in the future bank erosion would decline.

Has the past year been any different than in recent years?

Mr. BOE. I believe erosion this past year was fairly low, however, we have to consider that western North Dakota and Montana were extremely dry and the Missouri River flows have been diminished, therefore the river releases were down accordinly. When there is low river flows, we don't have that large an amount of bank erosion. Erosion fluctuates with the amount of flow.

Senator BURDICK. That isn't any sign of great improvement. That means that is just the condition of this year.

Mr. BOE. I believe so.

Senator BURDICK. That, in the years past, also has happened, but you still have the problem.

Mr. BOE. That is correct. The testimony prepared for last February's hearing in Bismarck, and included in this record, addresses the fact that the problem remains.

Mr. SPRYNCZYNATYK. Senator Burdick, if I could, there was one particular area last year known as Sundown Acres in Burleigh County that experienced substantial erosion, and there were about a half a dozen homes that were endangered. Those people had to take measures to try to protect those homes. Whether or not those measures will be successful, we don't know, but that was one instance in 1987 where something had to be done immediately.

Senator BURDICK. What measures did they take?

Mr. SPRYNCZYNATYK. Senator, what they had to do was place rock on the bank, rock, some concrete rubble, and other types of debris to harden or armor that bank so that the fast current wouldn't continue to cut out the bank. In one instance the edge of the water was probably within, I think about 100 feet of a house. Those people had no choice but to take this upon themselves and do the work.

Senator BURDICK. I am aware in various places that that river was so badly eroded that the only protection they could think of at the time was an old Ford car.

Mr. SPRYNCZYNATYK. There are a number of areas, sir, where they did use cars.

Senator BURDICK. Which is not a solution at all.

Mr. SPRYNCZYNATYK. No.

Senator, there are actually at least 41 sites that we have identified in the stretch of the river from the Garrison Dam to Lake Oahe that are in need of erosion protection. Several of them are actively eroding. These sites have been identified by both the North Dakota State Water Commission and also by the U.S. Army Corps of Engineers.

Senator BURDICK. There are sensitive points where I suppose erosion begins and grows more rapidly.

Mr. SPRYNCZYNATYK. Yes, sir, that's correct.

Senator BURDICK. Mr. Feyereisen, what are your views on the decline of the bank erosion along the river?

Mr. FEYEREISEN. Senator, I don't believe in my mind that they have declined. I believe that the erosion is still there, it still is existing, it still is happening. Certainly some years are better than others, but it is remarkable to see how quickly, how fast it can erode. It's there.

Senator BURDICK. We haven't solved the problem by any means.

Mr. FEYEREISEN. No way.

Senator BURDICK. Mr. Eiken, you indicated that the State Water Commission has identified the most serious erosion sites along the river. Could you or Mr. Sprynczynatyk give this committee an idea of where the two or three most pressing problems are located if you can?

Mr. **Eiken**. I can give you one example, and that is in Fort Abraham Lincoln State Park. We have been working for a number of years trying to get that problem resolved where we are losing about anywhere from one foot to five feet of river shoreline each year.

The problem with a State park is that that land is irreplaceable. We can't go somewhere else and buy another State park. If we lose that land within that historic unit, it is lost forever.

In addition to that, the other thing that is occurring within that park is, the erosion is causing other problems above the erosion. For example, there is a stretch of Highway 1806 I think that is being threatened by the loss of the land below that. We are facing a slide situation which has also been identified. We need to have those kinds of things corrected.

I think that's one of the 41 sites that the water commission has identified. But, Dave, maybe you want to speak to some of the other areas.

Mr. **Sprynczynatyk**. Yes, Senator, I can. In addition to the Fort Lincoln site which is a historical site, there is another site nearby known as the Sibley Island site. That's one that has a great amount of historical significance from the mid-1800's. It is experiencing erosion and needs to be protected.

There is another site on the west side of the river which is called the Mandan Cemetery which is a historical cemetery on the west side of the river.

I mentioned earlier the Sundown Acres area. Although some work was done there last year, there is additional work that needs to be done to adequately protect that area.

Further north there is another site known as the Sandstone Bluff site, and it is an area that we know is actively eroding. It is also an area that in the mid-1970's the Corps of Engineers installed limited stream bank protection. That was during a demonstration project. We like to refer to it more as an experiment than as a demonstration. The efforts of the Corps of Engineers at that time were to develop protection in areas at the least cost. Many of those areas have since experienced damage, and the erosion is continuing. The Sandstone Bluff site is one of them that we know is experiencing damage now and needs to be protected.

Senator **Burdick**. Gentlemen, I know something about this subject. I've lived on the banks of the Missouri River for many, many years. I have actually seen and heard erosion drop into the Missouri River. So I know how devastating it can be. We have to do something and we will do something about it.

Mr. **Sprynczynatyk**. Thank you, Senator.

Senator **Burdick**. Any further comments?

Mr. **Boe**. I would like to comment about these demonstration (experimental) sites in my county of McLean. We, also, had several of these section 32 projects and some are now in danger of failing. If these fail, we will have accelerated losses. Two particular areas in danger are Painted Woods and Sandstone Bluffs. There is a ridge along the river in the Painted Woods area and if this ridge is eroded then a large area of several hundred acres of prime agricultural bottom land will be lost. It is of utmost urgency at these locations in McLean County.

They are holding somewhat in some areas, in Peanut Woods in particular and Sandstone Bluffs. There is a ridge along the river there that is higher ground, and if that ever goes out, there is a big area of several hundred acres of real good bottom land that could go quite quickly. It is of urgency there.

Senator **Burdick**. If you gentlemen care to update your statements in the next ten days or two weeks, you may do so, and you can send me the copies for the final record.

Mr. **Sprynczynatyk**. We will, sir. Thank you.

[The following was supplied subsequent to the hearing:]

NORTH DAKOTA PARKS AND RECREATION DEPARTMENT

Pinehurst Office Park
1424 West Century Avenue
Suite 202
Bismarck, ND 58501
Phone: (701) 224-4887

March 25, 1988

Senator Daniel P. Moynihan, Chairman
Subcommittee on Water Resources, Transportation & Infrastructure
United States Senate
Washington, D.C. 20510-6175

Dear Senator Moynihan:

During my recent testimony to your Subcommittee concerning Senator Burdick's bill on streambank erosion and bank stabilization issues on the Missouri River in North Dakota, I was informed that the record would be left open for ten days for additional comments. Specifically, Senator Burdick requested my input concerning certain recreational areas along the Missouri River that deserved special attention. Since I did not have all of the information that he requested along with me in Washington, I am submitting the following for your consideration.

Enclosed is a memo from Doug Prchal of my park planning staff concerning Missouri River bank stabilization needs. I am requesting that this information be included in the record of the hearing, as it identifies critical bank stabilization needs which protect recreational and natural resources along the river. If you require further information concerning this matter, please contact me.

Thank you for giving me the opportunity to testify before your Subcommittee and the additional opportunity to provide more detailed information.

Sincerely,

Douglas K. Eiken

Douglas K. Eiken
Director

DE/kmm
Enclosures
cc: Senator Quentin N. Burdick
Tom Skirbunt

north dakota
parks and
recreation

NORTH DAKOTA PARKS AND RECREATION DEPARTMENT

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1424 West Century Avenue
Suite 202
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Phone: (701) 224-4887

TO: Doug Eiken
FROM: Doug Prchal
DATE: March 24, 1988
RE: Missouri River Bank Stabilization Needs

In response to your request for recreation sites adjacent to and along the Missouri River that are being jeopardized by bank erosion, I present the following list of prioritized sites and have enclosed a locator map for each.

Priority 1 - FORT ABRAHAM LINCOLN STATE PARK - approximate river mile 1311.3 to 1311.0, right side at the confluence with the Heart River, .3 mile at estimated cost of $247,000.

Priority 2 - CROSS RANCH STATE PARK - approximate river mile 1354.3 to 1353.1 right side, 0.8 miles at estimated cost of $364,000.

Priority 3 - DOUBLE DITCH HISTORIC SITE - approximate river mile 1326.5 to 1325.5, left side, 1.0 miles at estimated cost of $512,000.

These sites need protection not only for preservation of the recreation resource and the historic resource but also for protection of the riparian forest and its value to plant and animal preservation. There is a limited amount of floodplain forest remaining along the Missouri that needs to be preserved. Secondly, of the remainder, all is in a state of decline due to the controlled river system; flooding is required to maintain replacement, health, and vigor to a floodplain forest.

The above sites may be included in a list of priority erosion problems compiled by the Corps of Engineers in their July of 1985 Missouri River Streambank Erosion Study. The North Dakota State Water Commission also has a file of additional sites of which the above many be included on. Nevertheless, I have listed our priority sites on the condition that one or all were not listed.

On a final note, efforts should be advanced to get all three projects on file with the C.O.E. since prevention of bank erosion was the highest priority of landowners in the Missouri River Study draft compiled by our Department in December 1987. Recreationists also rated the problem as a priority in light of the qualities they perceive as important; fish and wildlife habitat protection, water quality improvement, and protection of riverside vegetation.

If I can provide further assistance on this matter please notify.

DP/ltl

Senator **Burdick**. I have one more comment to make concerning today's proceedings, and I do not think it will come as a surprise to anyone. I have no set view on the proposal of the Transportation Department regarding seaway toll retention.

But, as chairman of this committee, I am very sensitive to issues respecting committee jurisdiction, and this proposal clearly relates to the revenue provisions of Pub. L. 99-662. These were proposed and conferenced by the members of the Committee on Finance of the Senate and the Committee on Ways and Means of the House.

I urge the members of this committee not to jeopardize the fate of S. 2100 by adding to it a proposal which under the rules of the Senate must be considered by another committee. I say this without prejudice to the merits or demerits of the issue, and I urge the witnesses who have testified here today on this subject to present their views to the Finance Committee in this body, and the Ways and Means Committee of the House.

Having said that, I will announce that the record will be open for two weeks for other members of this committee and all members to make statements.

With that, we will adjourn.

[Whereupon, at 12:15 p.m., the subcommittee was adjourned.]

[Statements submitted for the record, responses to additional questions, and the bills, S. 2100 and S. 2101 follow:]

STATEMENT OF

ROBERT W. PAGE
ASSISTANT SECRETARY OF THE ARMY
FOR
CIVIL WORKS
BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES, TRANSPORTATION AND INFRASTRUCTURE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
MARCH 16, 1988

NOT TO BE RELEASED UNTIL APPROVED BY THE
SUBCOMMITTEE ON WATER RESOURCES, TRANSPORTATION, AND
INFRASTRUCTURE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

STATEMENT BY ROBERT W. PAGE, ASSISTANT SECRETARY OF THE ARMY FOR CIVIL WORKS BEFORE THE SUBCOMMITTEE ON WATER RESOURCES, TRANSPORTATION AND INFRASTRUCTURE UNITED STATES SENATE

Mr. Chairman, members of the Subcommittee, I am Robert Page, Assistant Secretary of the Army for Civil Works. Accompanying me today are John Doyle, Principal Deputy Secretary for Civil Works, Major General Hank Hatch, Director of Civil Works of the Army Corps of Engineers, and Bory Steinberg, Chief of Policy, Review and Initiatives Division of the Civil Works Directorate in the Office of the Chief of Engineers. It is a pleasure to have the opportunity to testify on potential water resources development legislation in the 100th Congress. As I and other officials of this Administration have stated on previous occasions, Mr. Chairman, we support getting the authorization of justified, supportable Army Corps of Engineers projects back on a regular basis. I commend the Committee's initiative in introducing the two bills that we are here to discuss.

Your letter requesting my testimony invited views on S. 2100, the "Water Resources Development Act of 1988" sponsored by you, Mr. Chairman, and Senators Burdick, Stafford and Symms; on S. 2101, the Administration's bill of the same title, introduced for us by Senator Stafford; and a proposal by the Saint Lawrence Seaway Development Corporation. I will be pleased to address these matters, but would first like to provide background that I hope puts the balance of my testimony in perspective.

Mr. Chairman, we would like to describe the history of how the water resources program was in shambles, how with the leadership of this Committee, the Congress and the Administration repaired the system with the Water Resources Development Act of 1986, how that act is working in an excellent fashion to put the program back on its feet, how important it is to return to a two-year water project authorization cycle while retaining the beneficiary pays and cost sharing reforms of the 86 Act, and the need to clearly recognize that only economically efficient, environmentally sound projects be undertaken. In addition, we are taking initiatives internally which we believe will enhance the implementation of the 86 Act and substantially increase the economy and efficiency of water projects. It is against this backdrop that I will address the proposed Administration Bill, S 2101; the Senate Bill, S 2100; and the proposal of the Saint Lawrence Seaway Development Corporation.

BACKGROUND

From 1970 through 1986, the water resources development program of this country was locked in a situation of stalemate and political gridlock. Authorization of many necessary water resource investments was brought to a standstill, caught up in a complicated web of competing factors such as project formulation policy debate, demands on a limited Federal budget capability, and a growing concern and awareness of environmental consequences of these projects. For that period, the budget of the Army Corps of Engineers remained relatively constant while inflation rose dramatically. The net result was a substantial decline in real dollars in investment in the nation's water infrastructure.

By 1985 (and even earlier), it was evident that we were experiencing a rapid deterioration of the viability of the Civil Works program. There were no major authorizations since 1970, there had been no new construction starts for several years, and during the 1970's the "new start" budget had already been declining. The study budget, the heart and soul of future projects and programs, was being cut back. Studies that made it through the system were being bogged down in the Washington maze. Attempts at voluntary cost sharing in the absence of legislation failed. Congress prohibited us from seeking cost sharing of studies and failed to appropriate funds for new construction starts on which sponsors had agreed to cost share on a voluntary basis and for which funds had been requested in a FY 83 supplemental appropriation and in FY 84 and 85. At the heart of the problem was a lack of agreement on the issue of cost sharing and user fees.

During the 1970's, annual new construction starts ranged generally between 20 and 30 per year. During the first four years of the 80's decade, there was only three new starts. Based on voluntary cost sharing, the 1985 Supplemental Appropriation Act authorized 41 new starts. Fiscal 87 and 88 include a total of 64 new starts and six additional are programmed for 1989. This new surge in the program is the direct result of reforms in P.L. 99-662.

Similarly, new study starts dropped from a rate of 30 to 45 per year in the mid 70's to an average of less than 10 per year in 81, 82, and 83. The program has recovered to the 20 to 30 per year range.

With the program shrinking, personnel ceilings have also shrunken. There were over 32,000 Army Civil Works employees in 1970. By 1985, the number had decreased to just over 28,000.

During those difficult years, our construction general program had fallen below $1 billion annually and the operation and maintenance costs in 1984 for the first time in Corps history exceeded construction expenditures. That unfortunate trend stopped in 1986 with passage of P.L. 99-662 and I am pleased to report the President's FY 1989 budget request for new construction general funds is 40% greater than the FY 1986 appropriation amounts. Moreover, because of non-Federal cost sharing, each dollar of the FY 1988 requested amount will support about 1.16 dollars of new water project development.

The system was broken and a fix was urgently needed. The old way of doing business was clearly obsolete. The entire project development and implementation process needed to be revised to respond to today's realities of budgetary constraint and at the same time make individual projects more cost effective and responsive to beneficiaries and sponsors through adoption of new financing and cost sharing rules and new user fees. This will lead to sound and optimal National infrastructure investment.

After years of discussion and negotiation and with the outstanding leadership and cooperation of this committee, the many perspectives of this program were blended into a comprehensive piece of legislation supported by the Congress and this Administration. In November 1986, the President signed Public Law 99-662, the Water Resources Development Act of 1986. This has provided the much needed framework for rebuilding the nation's water programs to respond to continuing and growing water resource development and management problems.

This framework includes a number of important reforms, such as:

o Increased Cost Sharing Criteria - Non-Federal sponsors are required to pay a significant share of study and project costs, thereby assuring that such activities do not proceed unless there is a local financial commitment.

o User Fees - The existing inland waterways fuel tax is gradually doubled and the harbor maintenance user fee is established to help defray the cost of improvements on the Nation's inland waterways and operation and maintenance of the Nation's commercial harbors. Revenues are deposited in Trust Funds and are available for use as needed. The U.S. Treasury estimates that for the Harbor Maintenance Fund, $156 million will be collected in FY 1989. This amounts to 40% of the anticipated Corps Operation and Maintenance expenditures for commercial navigation harbors.

o Cost Controls - Ceilings are established on the total cost of individual projects and on the total amount spent annually for construction, thus limiting Federal expenditures and providing discipline for the program.

o Sunset Authorizations - Projects and studies which are not of high priority or are not supported by local sponsors are automatically deauthorized if not funded within prescribed time limits.

o Increased Non-Federal Participation In Decisionmaking - Local sponsors are given a greater voice in the formulation of projects and in determining which projects are recommended.

o Facilitating Non-Federal Development - Under certain conditions, sponsors of harbor development projects can proceed with planning and construction and still qualify for Federal participation. Also, local sponsors of flood control projects may proceed with certain works and get credit toward their share of cost. This allows expedited project development.

o Inland Waterways Users Board - This organization is established from the users of the waterways to make recommendations regarding project development and funding priorities.

We have been operating under the provisions of P.L. 99-662 for a year and a half and are pleased to report the story so far is one of success. The basic principles of the Act are firmly in place. Cost sharing is working, local cooperation agreements are being executed, and projects are going forward. At the same time, the scope of many individual projects has been reduced substantially. As a result, adverse environmental consequences which occurred in the past are being avoided. We believe that 99-662 is working in the way it was designed to work.

For example, we expected new cost sharing provisions would result in significant downsizing and phasing of projects. The downsizing and phasing has both economic and environmental benefits. As a result of scaling back and phasing of projects, Federal Government expenditures were reduced $111 million at Norfolk, $125 million at New Orleans, $166 million at Mobile, $56 million at Baltimore, $17 million at Little Dell, Utah, and $78 million at Merced County, California. That is nearly $800 million that can now be put toward other worthy projects.

The project log jam has been broken and the budget for the Construction General account has increased nearly 40% since passage of P.L. 99-662. Another important feature of this is that non-Federal financing has increased from three percent to 14 percent of the construction budget.

Since initiation of project cost sharing as embodied in P.L. 99-662, including those projects authorized by the Supplemental Appropriations Act of 1985, 45 new construction starts have begun and another 66 have been budgeted. We are pleased to participate with non-Federal sponsors and other interested parties in celebrating these accomplishments. For example, we have celebrated the success of P.L. 99-662 with ceremonies all over the country highlighting specific projects. With your help, we initiated construction or signed local cooperation agreements with ceremonies at harbor dredging projects involving $15 million of construction costs at Portsmouth, New Hampshire; $212 million at New York, $252 million at Baltimore, $33 million at Norfolk, $8 million at Tampa, and $54 million at New Orleans. We have celebrated signed agreements to provide flood control involving $82 million of construction costs at Rochester, Minnesota; $90 million at Richmond, Virginia; and $120 million at the St. John's River, Florida; and environmental enhancement projects such as the fresh water diversion at Caernarvon, Louisiana, costing $29 million. The evidence is overwhelming that the public welcomes this new approach to water projects.

These and other similar projects represent billions of dollars of construction in which Committee Members and the Congress have had a continuing interest, projects which are needed and wanted, but had been caught up in the long wait for the '86 Omnibus Bill. These are all tangible evidence of the good things which have happened as a result of the 86 Act. Without that Act and your principle role in it, we would not be here with these success stories.

The program has gained new credibility by focusing limited resources on the most worthy projects, ensuring that local support is truly there, and ensuring optimum economic feasibility.

We have executed local cooperation agreements on 51 specifically authorized new projects initially funded for construction in the FY 1985 Supplemental Appropriations Act or in subsequent Appropriations Acts, in accord with new cost sharing policies. Guidance has been issued to the field on the financing, cost sharing, and user charge provisions and other required guidance is going out based on budget and appropriations priorities.

Implementation is under way of the credit provisions for past work done by project sponsors and interim final regulations are now operational for the ability-to-pay provision.

The Inland Waterway Users Board is operational, the Office of Environmental Policy has been established in the Directorate of Civil Works, and the initial reports on automatic deauthorization of 555 studies and 363 projects have been submitted to Congress. This is in addition to the more than 300 projects which were deauthorized by specific provisions of the Act itself.

PUBLIC LAW 99-662 PROJECT IMPLEMENTATION STATUS

Of the approximately 300 projects authorized in the Water Resources Development Act of 1986, Public Law 99-662, 88 have been funded or are proposed for funding for construction in the President's Fiscal Year 1989 budget. An additional 74 projects have been funded or are proposed for funding for preconstruction engineering and design. These project authorizations clearly are vital to the continued health of our program. For example, these projects account for 49 percent of the projects funded for construction in the Fiscal Year 1989 budget and 56 percent of the dollar volume of construction funded in Fiscal Year 1989.

NEW INITIATIVES

Although we have made much progress to date, several more initiatives are required in order to achieve the full potential of the reforms provided by P.L. 99-662.

The first initiative is the main purpose which brings us here today. That is, reestablishment of a two-year cycle of water project authorization bills. We commend the committee for taking this initiative and we look forward to working with you to develop a 1988 authorization bill which is true to the reforms of 99-662. The principles of cost sharing and user fees are critical to the future of the water resource program and we cannot backslide from these principles. It is also critical to ensure that authorized projects are truly sound investments for the American taxpayer and are within reasonable budget constraints.

We believe this committee supports the need for a two year authorization cycle and also supports the view that any authorization bill must be modest and must include projects which are economically sound and environmentally sensitive. The bills we are here to discuss today are clearly headed in the proper direction.

THE ADMINISTRATION'S BILL

In order to reestablish the two-year project authorization cycle, to remain true to the reforms of 99-662, and to be sensitive to budgetary realities, we have submitted a modest bill, S 2101, which was introduced for the Administration by Senator Stafford.

Four proposed projects are being recommended for authorization: a lock and dam on the Ohio River, near Olmstead, IL, which would replace Locks and Dams 52 and 53; a flood control project at Hazard, KY; a tandem of commercial navigation projects on the Delaware and Schuylkill Rivers in the vicinity of Philadelphia, PA and Camden, NJ; and a flood control project at Truckee Meadows in the Reno-Sparks, NV, area. In addition, we also propose a modification to the Redwood River, Marshall, MN, flood control project authorized in P.L. 99-662 to increase the cost of the project beyond the limits permitted by Section 902 of P.L. 99-662. All these proposals are also included in the Senate bill.

Two provisions in S. 2101 allow for technical clarifications to P.L. 99-662. Section 5 would provide that costs of utility relocations borne by the non-Federal sponsor in harbor development projects be credited toward the sponsor's additional 10 percent cost-sharing requirement. This is also provided in the Senate bill. Section 13 would clarify the language in Section 922 which allows the Corps to provide construction services to states and political subdivisions. The recommended language, we believe, was what was intended in P.L. 99-662.

Section 6 of our bill represents one of our most important proposals. For many years the Congress and the Administration have recognized strong public desires to develop recreation potential at Corps of Engineers water resource projects. In the past, the Corps has responded and currently operates and maintains outstanding recreational areas throughout the country. However, we are clearly unable to meet public demand for more and better recreation facilities. With current and projected future budget constraints, we must find a way to provide more funding to maintain and improve these areas. Based on existing statutes, the Corps is currently prohibited from collecting entrance or admission fees or from collecting fees for use of some campgrounds. The Corps is further required to provide one free campground at each project where camping is permitted. The proposal would eliminate these restrictions and would place the Corps on a comparable basis with other agencies concerning the collection of recreation use fees. It is not our intent to charge the public for entering Corps projects. However, we do believe it is appropriate to establish a charge for use of developed recreation facilities. Pursuant to the bipartisan budget agreement, the Corps will not begin collecting the fees until Fiscal Year 1990.

The President's Commission on Americans Outdoors found that people are willing to pay more for use of recreation facilities on public lands and that most believe that these facilities should be paid for by beneficiaries rather than with taxes. If the legislation is enacted, we will use the anticipated increase in revenue to maintain and improve recreation areas at Corps projects. We would welcome the opportunity to discuss the merits with you further.

Section 7 would clarify that the Corps is authorized to continue filling the confined disposal facilities constructed under Section 123 of the River and Harbor Act of 1970 until those facilities are full. A question had arisen of whether the limitation of use is a temporal or volumetric one. This proposal has as its purpose a clarification only and will not change the way the Corps has been operating. The provision would also sunset the authority to require construction of new confined disposal facilities for all dredged material disposal on the Great Lakes. This will allow confined disposal facilities to be considered as one of an array of alternatives for dredged material disposal rather than the only method. Only then will the Corps be able to take full advantage of the vast amount of knowledge acquired on the effects of dredged material disposal since the original authorization.

Section 8 would allow the Corps to transfer funds to other Federal or non-Federal public agencies to intensify wildlife management on lands owned by such agency. This intensified management authority would enhance our ability to choose alternatives for mitigating impacts to fish and wildlife resources attributable to Corps projects. The Corps does not currently have the authority to transfer funds to another agency for this purpose. As a result, we have had to forego valuable and cost efficient mitigation opportunities in the past. It is important to understand that the mitigation would be new work for the agencies owning the land and funding for such mitigation would come from Corps of Engineers project funds and not the budgets of the receiving agencies.

Section 9 of S. 2101, would authorize a 2-year demonstration program which would allow the Corps to provide technical assistance to private firms competing for foreign contracts with all Corps costs to be paid in advance by the firm. There would also be a requirement that the Corps efforts would not compete with services available in the private sector. We believe such an effort is critical to the US position in the international sector and will provide extensive benefits to the Corps in using and enhancing its expertise and to the Nation.

Section 10 of S. 2101 allows the Corps to construct, at 100 percent non-Federal cost, two extensions to the Brush Creek and Tributaries, MO and KS, flood control project. This provision would build on the partnership concept and allow economies to be gained by Federal construction at non-Federal cost of project extensions desired by the non-Federal sponsor but not found to be justified under Federal project justification standards.

Section 11 would authorize the Corps to construct a replacement laboratory near the Ohio River Division in Cincinnati, OH. The old laboratory is obsolete. Building a new laboratory as proposed exceeds the current construction authorization of the Corps.

Section 12 would allow the Corps to reimburse employees working on the Corps Portuguese and Bucana Rivers project in Puerto Rico for tuition expenses at private English-taught schools near the project. The closest English-taught school provided at Federal expense is more than two hours distant, one way, by school bus.

INTERNAL INITIATIVES

As a follow on to implementation of 99-662, we are implementing various internal initiatives which will build on and extend the reforms Congress provided in that Act. These initiatives reflect the kind of activity I promised you in my confirmation hearings several months ago. These changes to our internal mechanisms are long overdue and will allow us to be more responsive to non-Federal sponsor's needs and to develop projects in a more efficient and cost conscious manner.

We have four major internal changes that we expect to have implemented in the coming months.

We will expand the scope of feasibility studies to include more definitive cost estimates and project implementation schedules. This would allow the non-Federal sponsor to proceed with its implementation responsibilities, especially the arrangement of financing.

We will accelerate the process of planning, designing, and constructing projects by giving district engineers clear policy guidance early in the study process so that once a report is completed by the district engineer, there will be a high degree of assurance that the recommendation will be supported within the Administration. Higher level reviews will be consolidated into a several month rather than several year time frame and budget formulation processes will be revised to reduce or eliminate the lag time between the planning, design, and construction phases. We expect that the time from initiation of planning to project completion can be cut from the historic 20 plus years down to 10 years. The benefits to everyone are obvious.

We are instituting a project manager system to identify one person who is responsible for the project from cradle to grave. In this way, all the features and phases of a project can be integrated for better economy and efficiency.

We are providing a positive system of controls on costs and schedules to ensure that the Federal Government and the non-Federal sponsor get what they want, when they want it, and within budget.

One additional important initiative involves making better use of Corps capabilities to enhance engineering and construction quality through research and development.

Based on my private sector experience and my service on the President's Export Council, I believe United States investment in engineering and construction research and development is seriously deficient. This adversely affects our capabilities at home and in international competetiveness. We envision a cost-shared program with private industry and plan to reprogram $300,000 of our 1988 research and development program to determine the feasibility of this effort. If our initial efforts are successful, we would anticipate advising this subcommittee and Congress at a later date of our plans to continue within the General Investigations resources proposed in the FY 89 budget.

PROPOSED LEGISLATION

In your letter of invitation, you specifically asked for our comments on S 2100, the bill proposed by the committee.

I have attached for the Committee's use a detailed statement of the Army's position on the provisions in S. 2100. Rather than go into detail here, I will summarize the major points.

Projects - The bill would authorize eleven Corps of Engineers projects. Four of these projects are also contained in the Administration's bill, but six of the remaining seven projects, while covered by a report of the Chief of Engineers, have not yet completed the Executive Branch review requirements. The seventh, a project at Wolf and Jordan Rivers, Mississippi is not recommended for authorization. It is essentially a non-Federal action which can be paid for by the users. We anticipate that review of some of the remaining project reports will be completed in the weeks ahead and we will report to you on our findings. Until these project reviews are complete, and unless these reviews conclude that authorization of the projects for construction is consistent with the goals of a national civil works construction program and with budget priorities, we cannot support their unconditional authorization.

Cost Controls and Management Improvements - The bill contains a number of provisions that control costs, encourage innovation or are intended to increase the efficiency and productivity in Corps programs. Several of these provisions are also contained in the Army's bill. We generally support these provisions.

Special Provisions - There are several provisions relating to special situations and projects that are not supportable in their current form without additional justification.

In summary, S. 2100 represents an important step in moving the Nation's water program forward. While there are portions of the bill that we cannot support in their current form, the bill contains a number of important projects and provisions that can serve as a basis for a supportable bill. We pledge our support in working toward this end and are optimistic of a successful effort.

SAINT LAWRENCE SEAWAY

As to the third item in your letter of invitation, I assume that the proposal in question regarding the Saint Lawrence Seaway Corporation is the one transmitted to Congress by former Secretary Elizabeth Dole in March of last year. This proposal would affect the disposition of tolls collected by the Corporation and the use of funds in the Harbor Maintenance Trust Fund established by the WRDA. We support the Seaway proposal. We would defer to the Department of Transportation for further discussion on this proposal.

CONCLUSION

In summary Mr. Chairman and Members of the Committee, we commend you for your leadership in forging a reasonable, economic and environmentally sensitive water resources program through the Water Resources Development Act of 1986. The water resources program of this country was broken and your leadership in adopting P.L. 99-662 set a firm foundation for repair. We applaud your efforts to reestablish the two year authorization cycle and for proposing legislation for 1988 which is true to the reforms established in P.L. 99-662. For our part, we have worked hard to implement the spirit and the letter of P.L. 99-662, we look forward to working with you toward this critical 1988 authorization bill, and we are moving out on our own with various initiatives to provide the people of this country with a vital, cost effective, and timely water resources program in partnership with our non-Federal project sponsors.

The opportunities are there and we pledge to work with you to see the promises fulfilled.

ARMY POSITION ON PROVISIONS OF S. 2100

Sec. 2 - "Secretary" defined as Secretary of the Army.

Position: Support. This definition is the same as contained in Army's proposed legislation and is consistent with the Water Resources Development Act of 1986 (WRDA).

Sec. 101 - Project Authorizations.

The Administration position varies from project to project. The Administration supports only those projects currently contained in its legislative proposal. Of the eleven projects in this section, four are contained in the Administration bill:

Lower Ohio River navigation, Locks and Dams 52 and 53, IL & KY
Hazard, KY
Delaware River, Philadelphia to Wilmington, PA, NJ & DE
Truckee Meadows, NV

These projects are contained in the Administration bill and in S. 2100 and are presumed to be identical authorizations. We note, however, that the cost estimates for the Delaware River project are somewhat higher in S. 2100 than in the Administration bill. Assuming that the difference is attributable to differing price levels for this project, the Administration supports authorization of these projects, provided that the cost sharing provisions of the P.L. 99-662 apply. The Administration opposes the remaining seven projects. Six projects are opposed because review by the Executive Branch is not complete. The Wolf and Jordan Rivers project is opposed because it is a slackwater harbor project and that costs could be recovered by non-Federal interests through access fees and sale and/or lease of improvements.

As Executive Branch review of the remaining six project reports is completed, we anticipate that additional projects may be supported for authorization. In the interim, we continue to oppose their unconditional authorization.

Sec. 102 - Maximum Cost of Projects.

Army supports the application of Section 902-type project cost ceilings to new project authorizations. Wording changes may be suggested at a later date.

Sec. 103 - Project Deauthorizations

Army supports the application of Section 1001-type automatic project deauthorizations to newly authorized projects. Wording changes may be suggested at a later date.

Sec. 104 - Project Modification, Redwood River, Marshall, MN

Army supports the increase in project cost ceiling for this project. This provision is contained in Army's legislative proposal.

Sec. 201 - Utility Relocations for Harbor Projects.

Army supports this effectuation of Congressional intent regarding the crediting of project sponsors' utility relocation costs toward the additional 10 percent cost sharing. This provision is contained in Army's legislative proposal.

Sec. 202 - Three Affiliated Tribes Land Transfer.

Army would have no objection, if the proposal is substantially modified. Title to land is vested in the United States not in the individual agencies. Therefore, Clause 1 should be deleted. Subsection (5) provides for a gratuitous transfer of the subject lands. Section 1125 of P.L. 99-662 authorized the exchange of the Four Bears complex for tribal tracts needed for the operation and maintenance of the Garrison project. The tribal tracts, consisting of 82 parcels, are still needed by the Corps for project operation purposes. In addition, during the acquisition of the Four Bears complex lands, the Tribes were compensated based on the fair market value of the land. The lands authorized to be transfered to the Corps are considered to be of low value. We believe the exchange provided in P.L. 99-662 is a fair one and are opposed to a gratuitous transfer of these lands. Army supports the corrections to the legal description in section 1125 in P.L. 99-662 that are contained in subsections (2) and (3). Subsection (6) is ambiguous and should be clarified.

Sec. 203 - Federal Project Repayment District.

Army has no objection.

Sec. 204 - Applying Flood Plain Regulation Requirements to Shoreline Protection Projects.

Army supports this provision. Requiring non-Federal project sponsors to comply with Federal flood plain management and flood insurance programs for proposed shoreline protection projects should help discourage unsound development along the shoreline.

Sec. 205 - Innovative Technology.

Army has no objection to this provision. While we do not believe that this provision is necessary to get the Corps to promote innovation, the provision does encourage innovation and creativity in all Corps programs. Many of the activities that this provision encourages the Corps to do are already either an integral part of Corps processes or are actively being addressed under current initiatives. Nevertheless, this provision would emphasize Congress' interest that we should continue and increase our efforts in this area.

Sec. 206 - Reporting Costs to Non-Federal Project Sponsors.

Army has no objection. However, this can be done without additional legislation and Army would provide such information in the normal course of events in the spirit of partnership with non-Federal project sponsors.

Sec. 207 - Benefits to Armed Forces.

Army does not support this provision. The existing substantial Federal share takes into account the benefits to the Nation, including defense.

Sec. 208 - GAO Review of Corps Management Practices.

Army does not object, but believes the provision is not necessary.

Sec. 301 - New York Harbor Drift Removal Cost Ceiling Increase.

Army would have no objection, if the provision is modified. There has been no study to indicate whether continuation of this program is justified. This provision should be modified to make additional work subject to a determination by the Secretary that it is feasibile from a technical, economic, and environmental standpoint and to reiterate cost sharing requirements.

Sec. 302 - Red River Basin Technical Resource Service.

Army opposes this provision. This duplicates existing authorities for flood plain management services and planning assistance to states, which are sufficient. Creating special authority in this case would circumvent existing established authorities and could encourage other states to seek similar legislation. We know of no justification for such additional authority.

Sec. 303 - Water Quality Effects of Hydroelectric Facilities.

Army has no objection, if the provision is modified. There is no compelling evidence for the need for such a Corps-wide study; however, we do not object if the study is either funded by the Environmental Protection Agency and conducted in coordination with the Corps or funded by hydroelectric power beneficiaries.

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, DC 20310 -0103

29 MAR 1988

Honorable Quentin N. Burdick
Chairman
Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510-6175

Dear Mr. Chairman:

This letter transmits, at your request, the Department of the Army views on issues raised in testimony presented during the Water Resources, Transportation, and Infrastructure Subcommittee's recent hearings on S. 2100, and S. 2101, both entitled the "Water Resources Development Act of 1988." Also included are responses to questions which you and Senator Robert T. Stafford raised during the hearings. A copy of this letter and enclosures is being furnished to Senator Stafford.

I understand that the Committee will soon be marking up S. 2100 and encourage you to consider not only the enclosed views, but also the provisions of the Department of the Army's bill, S. 2101. We believe that, through your leadership, the Committee will send a strong message to Congress that only justified cost shared projects and provisions will be considered in this legislation.

We share a strong desire to see responsible water resources legislation enacted by the 100th Congress. If I can be of any further assistance during future consideration of this legislation, please do not hesitate to contact me.

Sincerely,

Robert W. Page
Assistant Secretary of the Army
(Civil Works)

Enclosures

QUESTIONS AND ISSUES RAISED AT HEARING ON WATER RESOURCES DEVELOPMENT ACT OF 1988

SENATOR BURDICK'S QUESTIONS AND ISSUES:

1. Review of the GAO report and Burdick's Legislative Proposal.

2. Missouri River - Cost of doing business

3. Projects included in S. 2100

4. Support by OASA(CW) or Administration on beach erosion, recreation, or environmental enhancement

5. Testimony of Brendan W. O'Malley, for the Port Authority of NY & NJ

   ISSUE: Cost ceiling for the New York Harbor Collection and Removal of Drift Project.

   a. ISSUE: Scheduling of local payments (SEE AAPA)
   b. ISSUE: Dredged material disposal costs (SEE AAPA)
   c. ISSUE: National Defense benefits (SEE AAPA)
   d. ISSUE: Utility relocation responsibility (SEE AAPA)
   e. ISSUE: Consolidated environmental permit review (SEE AAPA)
   f. ISSUE: Local Port Fees (SEE AAPA)

6. Testimony of Donald L. Hey, Director, Wetlands Res. Inc.

   ISSUE: Des Plaines River Wetlands Demonstration Project.

7. Gary Failor, American Association of Port Authorities

   a. ISSUE: Mitigation land cost.
   b. ISSUE: Guidance for local implementation of Corps Projects.
   c. ISSUE: Scheduling of local payments (SEE AAPA)
   d. ISSUE: Dredged material disposal costs (SEE AAPA)
   e. ISSUE: National Defense benefits (SEE AAPA)
   f. ISSUE: Utility relocation responsibility (SEE AAPA)
   g. ISSUE: Consolidated environmental permit review (SEE AAPA)
   h. ISSUE: Small project implementation under Sections 203 and 204.
   i. ISSUE: Local Port Fees (SEE AAPA)

j. ISSUE: Harbor Maintenance Tax "double" assessment

8. Testimony of J. Stanley Payne, Jr., VA Port Authority

a. ISSUE: Armoring of Chesapeake Bay Bridge Tunnel

b. ISSUE: Reversionary rights to Craney Island

c. ISSUE: Utility relocation cost sharing

d. ISSUE: Section 933 implementation
e. ISSUE: Incremental Reversion

9. Testimony of Dr. David C. Campbell, Nat'l Wildlife Federation

a. ISSUE: Olmsted Lock and Dam

b. ISSUE: Reservoir management for fish and wildlife purposes

c. ISSUE: Release of hydrologic studies

d. ISSUE: Cost sharing of Inland Waterway Studies

e. ISSUE: Cost Sharing for mitigation O&M

f. ISSUE: National defense benefits

g. ISSUE: Sunset provision

10. Testimony of Donald L. Stokley, President and General Manager of the Municipal Electric Authority of Georgia

ISSUE: Public participation in the operation of Corps projects

11. Testimony of Mr. Nicholas J. Melas, Metropolitan Sanitary District

ISSUE: Chicago Underflow Plan

12. Testimony of Mr. Kenneth L. Edwards, Riverside County Flood Control and Sanitary District, CA

a. ISSUE: Section 215 agreements

b. ISSUE: Amendment to Section 221 of P.L. 91-611

13. Testimony of Mr. Gary Gagnon, Milwaukee Metropolitan Sewerage District

ISSUE: Milwaukee flood control studies

14. Testimony of Ms. Virginia Bax-Valentine, Chief Engineer & General Manager, Clark County Reg[illegible] Control District, Nevada

ISSUE: Credit for local work on Las Vegas Valley Project

15. Testimony of Mr. Dennis McDuffy, City Manager of the City of Rancho Palos Verdes, CA

ISSUE: Mitigation banking

16. Testimony of Mr. Jim Conn, Mayor of Santa Monica, CA

ISSUE: Santa Monica breakwater

17. Testimony of Mrs. Kay Horrell, Councilmember, Redondo Beach, CA

ISSUE: Redondo Beach

18. Upper Mississippi River Environmental Management Issue

19. Florida Dredging Issue

Senator Burdick

1. QUESTION: Have you or your staff had time to review the GAO report and my legislative proposal on this subject? Would you comment on it please?

ANSWER: Yes, sir, a draft of the GAO report has been reviewed. On February 10, 1988, I provided a reponse, to th GAO for the Department of Defense which stated that the Department fully agrees with the Report. I have seen your legislative proposal. I cannot support it at this time because no Corps report is available to document the justification for such measures or the magnitude of their cost (as required by Sec 603 of the Water Resources Development Act of 1986). Furthermore, the requirement of 25% non-Federal cost sharing would likely not be satisfied.

Senator Burdick
Question 2

2. QUESTION: The erosion which is occurring is a cost of doing business, a cost of having hydropower, navigation, and flood control on the Missouri River. Have you any proposal to make on this subject? How in your view should this problem be addressed?

ANSWER: Bank erosion is a cost of doing business for flood plain ownership adjacent to an erodible river channel. Operation of the mainstem Missouri River reservoirs has caused changes in the nature of bank erosion. While there is now a continuous net loss of land because the accretion process has been altered, mainstem reservoir operation has decreased the rates of bank erosion and increased the value of lands. Army has no current proposal on bank erosion. Based on previous and current studies by the Corps of Engineers, bank erosion measures lack economic justification. Section 603 of the Water Resources Development Act of 1986 authorizes streambank erosion measures for several reaches of the upper Missouri River.

3. QUESTION: Mr. Secretary, I understand that a number of projects which are included in S.2100 have been favorably sent from your office to the Office of Management and Budget for review, but are not included in your legislative proposal, S.2101. Which projects fall into this category?

ANSWER: The Administration review process includes consultation with OMB on the basis of a draft position of the Secretary. Thus, the Secretary's position on any particular action is not developed until after input is received from OMB. We have completed our review of Wolf and Jordan Rivers and oppose the project on the basis that it is a slackwater harbor which can readily be financed by local interests. We are currently discussing the West Columbus project with OMB, but have not yet reached a conclusion. The other five project reports involve the need for clarification by the Corps of some features of the reports before we begin coordination with OMB.

Senator Burdick
Question 4

4. QUESTION: Mr. Secretary, is it true that projects with certain kinds of benefits, particularly beach erosion, recreation, or environmental enhancement, will not be supported by you or the Administration because of the type of benefit provided by the project?

ANSWER: This Administration's policy has been to rely on the private sector to provide public services whenever possible and to reduce Federal competition with the private and non-Federal public sectors. This is especially important during these times of budget constraints. We are therefore unable to devote Federal budgetary resources to, nor to support water resources proposals having primarily recreation outputs. Recreation benefits are acceptable if produced either jointly with other project benefits (recreation costs are not separable), or result from development of recreation potential created by projects formulated and justified for other purposes.

The recreation outputs of a beach erosion project are viewed the same as other recreation activities; however, the storm damage prevention outputs of shore protection are given the same priority as flood protection.

Environmental enhancement that produces net National Economic Development (NED) benefits may be included in the NED plan and are supported. The more typical case, however, does not produce net NED benefits and must be considered as an exception to the NED plan as provided for in the Principles and Guidelines. Favorable consideration is given where there is a compelling case for the merits of the proposal and, of equal importance, for the inclusion of the environmental enhancement provision as part of the Corps of Engineers water resources program rather than other Federal or non-Federal programs that have primary responsibility for these matters.

In summary, our resources will be concentrated on the traditional missions of flood control and navigation. Therefore, Federal competition with the private and non-Federal public sectors in the planning and development of hydropower production, municipal and industrial water supply, and recreation facilities will be avoided, except where such development is part of an implementable Civil Works project which provide flood protection or navigation benefits.

Senator Burdick
5

SUBJECT/ISSUE: Raising the cost ceiling for the New York Harbor Collection and Removal of Drift Project.

DESCRIPTION: Testimony by Brendan W. O'Malley for the Port Authority of New York and New Jersey on 16 March 1988 before the Senate E&PW Committee.

DISCUSSION: The project involves the collection and removal of drift from derelict vessels; deteriorated piers, wharves, and other structures; and debris lying along the shores. The project was authorized in the 1974 Water Resources Development Act with a Federal cost ceiling. This ceiling has been modified twice and currently is $30.5 million. The estimated Federal cost of the authorized work is $53.93 million. Funds are requested for Fiscal Year 1989 to complete the work that can be accomplished within the appropriations limit, and completion of the remaining features is indefinite. Section 301 of H.R. 2707 which passed the House on March 15 would raise the authorization of appropriations to $55 million.

PROPOSED ARMY POSITION: Oppose. This is a non-traditional navigation project that should be accomplished by local interests. We have budgeted for this activity in the past only in expectation that once the $30.5 million ceiling was reached, the project would cease.

Senator Burdick
Question 6

SUBJECT/ISSUE: Authorization of Corps Project for Des Plaines, IL, Wetlands Demonstration Project

DESCRIPTION: Testimony by Dr. Donald L. Hey on 17 Mar 88 before Senate E&PW Committee. Dr. Hey proposed that the Corps be authorized to spend $2.2 million for the Des Plaines River Wetlands Demonstration Project. The authorization is for $2.2 million for construction funds.

DISCUSSION: There is no Corps of Engineers project involvement in the area of the Des Plaines River in which the Wetlands Demonstration Project is taking place.

PROPOSED ARMY POSITION: The Nation is becoming increasingly aware of the need to develop new and innovative ways to protect and enhance our wetlands resources. The Corps has a great deal of experience and technical capability that could be utilized in this effort. Furthermore, in the exercise of our regulatory program responsibilities, we would likely find useful any new technologies or methodologies developed as a result of wetlands research. Unfortunately, in this time of constrained funding and concern over high national deficits, our program priorities for the present and near future must necessarily give primary emphasis to the mainline outputs of commercial navigation, flood damage prevention, hurricane and storm damage prevention, and hydropower and/or municipal or industrial water supply in conjunction with these mainline outputs. If funding constraints were not so limiting and, if appropriate cost sharing were required, we could more easily be supportive of and participate in achievement of the general objectives which underlie the Des Plaines Project. We cannot express support at this time, however, for this specific project which has not been studied by the Corps, and, in fact, must oppose the project-specific authorization at this time of all such projects which have not completed the Administration's review procedures.

Senator Burdick
7A

SUBJECT/ISSUE: Mitigation land as project cost rather than local sponsor contribution

DESCRIPTION: Testimony by Gary Failor for the American Association of Port Authorities on 17 March 1988 before the Senate E&PW Committee

DISCUSSION: AAPA has interpreted Section 906 to mean that the costs of land acquisition for mitigation should be considered a project cost for the purpose of allocating local and Federal shares, rather than as Army interprets the section. Army considers land acquisition for mitigation to be a 100 percent sponsor cost to be credited toward the 10 percent repayment. We do not agree that the AAPA proposal contains the "correct" interpretation of Section 906. If mitigation is to be an integral and necessary component of a project, then the costs of mitigation should be treated the same as other project costs for those purposes which cause the need for mitigation. Section 906(c) recognizes this fact by providing that "costs incurred...to mitigate damages to fish and wildlife...shall be subject to cost sharing or reimbursement to the same extent as such other project costs are shared or reimbursed..." (emphasis added). Because PL 99-662 has a generic requirement that non-Federal interests provide lands, easements, rights-of-way, and relocations (LERR) for all project purposes except for inland waterway navigation, we believe it follows that cost sharing to the same extent for mitigation means that the non-Federal interest shall be required to provide LERR where this is a requirement of the project purpose which necessitates the mitigation.

PROPOSED ARMY POSITION: Oppose. This is a reduction to the cost sharing requirements of WRDA '86.

Senator Burdick
Question 7b

SUBJECT/ISSUE: No regulatory guidance has been issued for implementation of Sections 203 and 204 of P.L. 99-662

DESCRIPTION: Testimony by Gary Failor for the American Association of Port Authorities on 17 March 1988 before the Senate E&PW Committee. Presumably, the AAPA would propose legislation to address this matter.

DISCUSSION: AAPA has protested that length of time that it has taken for the Corps to issue guidance on implementation of Sections 203 and 204 which would allow potential harbor channel project sponsors to plan Federal projects, construct them when authorized, and be reimbursed by the government for the Federal share after construction.

Guidance on Section 204(e) is currently in the final review stage and should be available to the public in May. Guidance on Section 203 and the other subsections of Section 204 will be available in July. In the meantime, the Corps has been answering inquiries about either section as they have been received without waiting for the formal guidance.

These sections have important implications for the Corps program. If we do not apply the same standurds to projects studied or constructed under 203 and 204, there may not be enough money for other projects, in which there is a stronger Federal interest. One of our goals has therefore been to ensure that Corps budgetary priorities are not distorted by non-Federal decisions.

PROPOSED ARMY POSITION: Oppose legislation as unnecessary. We support timely issuance of guidance on Sections 203 and 204. In the meantime, we encourage any port or local authority who might he interested to contact us and let us know of their interest, either in writing, or through meetings with Corps personnel.

Senator Burdick
Question 7c

SUBJECT/ISSUE: Changes in payment scheduling or allowances for interest should be authorized so that project sponsors no longer forfeit interest on local cost share contributions made to the Federal Treasury well in advance of fund expenditures.

DESCRIPTION: Testimony by Gary Failor for the American Association of Port Authorities on 17 March 1988 before the Senate E&PW Committee

DISCUSSION: We believe this proposal is based, at least in part, on an initiative by the New York-New Jersey Port Authority. The Port Authority wishes to commit its share of the funds for construction of the Kill Van Kull deep draft navigation dredging project via a Letter of Credit since it has a large amount of cash reserves. It would like to provide the funds to the Corps as bills are payable. The District cites the Anti-Deficiency Act provisions as a constraint to meeting the sponsors request. EC1165-2-144, dated 1 June 1987, "Policy Guidance for New Start Construction Projects" addresses this in several sections. Paragraphs 5c, 6e, 7h, and 7n of the referenced EC address acceptable procedures for handling required non-Federal funds for construction of projects authorized under P.L. 99-662. Irrevocable escrow accounts are acceptable vehicles for the sponsor to use in providing their funds for construction. The EC also allows considerable flexibility in developing a construction schedule and a funds obligation sequence to meet the needs of the sponsor's financing plan.

Obligations are usually made annually in many dredging contracts due to ease of administration. Monthly obligations are possible although they may create some additional work in administering the contract (as much as 12 times as many forms and checkpoints as with annual obligation-in-full at the outset of construction type administration) but they do not violate the Anti-Deficiency Act. Several Districts are planning on such a vehicle whereby the dredging will take place in one fiscal year but the sponsor's escrow account will be drawn in a monthly fashion to meet with obligations following the pattern. The Corps is presently developing guidance on accounting procedures for handling locally provided funds. This guidance presently stipulates that methods such as escrows can and should be used whenever a sponsor requests accommodating their need for tight money-management techniques such as monthly obligations.

There is nothing that can be done to satisfy the sponsor's request to turn funds over to the Corps of Engineers (Treasury) at billing. OMB Circular A-34, AR 37-20, and ER 37-2-10 all require that funds received from non-Federal sources be deposited to the U.S. Treasury prior to incurring obligations - not when bills are to be paid - to assure the Treasury has funds to cover the obligations of the U.S. Government as required by the Antideficiency Act.

In addition, the Government does not pay interest on non-Federal funds deposited to the U.S. Treasury. There could be a lag from the time obligations are made to the time a bill for work done is received. This lag could be substantial depending on the billing practices of the contractor. However, the Corps has worked out administrative mechanisms to minimize the time lag. The Corps states that nothing short of legislation amending the Anti-Deficiency Act can change this situation.

PROPOSED ARMY POSITION: Oppose as premature. This is a matter which is currently undergoing review within the Executive Branch. We recommend against enactment of this proposal until completion of this review.

Senator Burdick
7D

SUBJECT/ISSUE: Dredged material disposal costs should be considered part of the total project cost.

DESCRIPTION: Testimony by Gary Failor for the American Association of Port Authorities on 17 March 1988 and Brendan O'Malley for the Port Authority of New York and New Jersey on 16 March 1988 before the Senate E&PW Committee

DISCUSSION: Dredged material disposal costs, including such things as lands, dikes and related appurtenances, are part of the total project cost, but they are assigned to non-Federal interests, in accordance with Section 101(a)(3) of P.L. 99-662. This continues traditional Army policy, and is consistent with policy applicable to all other project purposes (except for inland waterway projects authorized in accordance with Section 102), whereby non-Federal beneficiaries must provide all lands needed for the basic Federal project. The intent of the new cost sharing was for non-Federal interests to share in costs traditionally assigned to the Federal Government, and not for the transfer of non-Federal responsibilities to the Federal Government.

PROPOSED ARMY POSITION: Oppose. This is a reduction to the cost sharing requirements of WRDA '86.

SENATOR BURDICK
7E

SUBJECT/ISSUE: A provision should be made in the law for reducing the local project cost share by the degree to which the Federal Government in the form of the military is the project beneficiary.

DESCRIPTION: Testimony by Gary Failor for the American Association of Port Authorities on 17 March 1988 and Brendan O'Malley for the Port Authority of New York and New Jersey on 16 March 1988 before the Senate E&PW Committee

DISCUSSION: The existing Senate provision would reduce the costs that the local sponsor would have to pay and increase the Federal share in order to compensate for benefits from the project which accrue to the military as much as the benefits can be quantified. We agree that the Federal Government should share in project costs when it is the beneficiary; however, we do not believe legislation is necessary. Project documents generally cover these situations and recommend special cost sharing, when necessary. In addition, there is no way to arrive at a generally accepted or scientifically "fixed percent offset" for defense use or value for ports or waterway projects already authorized as AAPA has suggested.

PROPOSED ARMY POSITION: Oppose. We believe that the existing substantial Federal share takes into account the benefits to the Nation, including Defense. To the extent that direct benefits are unique to national defense activities, special cost sharing can be recommended under existing procedures.

SENATOR BURDICK
7F

SUBJECT/ISSUE: The Corps of Engineers should be directed to enforce Section 10 permits to require utilities to relocate their transmission lines at utilities' expense when such lines present an obstruction to proceeding with authorized projects.

DESCRIPTION: Testimony by Gary Failor for the American Association of Port Authorities on 17 March 1988 and Brendan O'Malley for the Port Authority of New York and New Jersey on 16 March 1988 before the Senate E&PW Committee

DISCUSSION: This is a long-standing issue between the Corps and AAPA. Our position has been that non-Federal interests (sponsor) should perform or assure performance of all utility relocations necessary to carry out a harbor project, in accordance with Sec 101(a)(4). We believe the only role for the Federal Government is in overseeing the implementation of the special cost sharing requirement for deep draft harbors legislated by Sec 101(a)(4). In order to aid in the negotiations between sponsors and utility owners for deep draft harbors, the Corps will inform all affected utility owners that relocation of their utility is necessary and that, the costs are to be shared by the local sponsor. Notwithstanding Sec 101(a)(4), District Engineers still have the discretion to use the provisions of Sec 10 permits to require relocation of utility lines.

PROPOSED ARMY POSITION: Oppose as unnecessary. Sec 101(a)(4) is clear with regard to responsibility for utility relocation associated with a harbor project. In addition, should the utility companies be unwilling to work with the project sponsor to accomplish relocation, DE's have discretion to require relocation of utilities under provisions of Sec 10 permits.

Senator Burdick
7G -

SUBJECT/ISSUE: The environmental permit approval process for the Federal and non-Federal portions of a harbor improvement project should be consolidated.

DESCRIPTION: Testimony by Gary Failor for the American Association of Port Authorities on 17 March 1988 and Brendan O'Malley for the Port Authority of New York and New Jersey on 16 March 1988 before the Senate E&PW Committee

DISCUSSION: The Corps has an Engineering Regulation (ER 1105-2-20) and Permit Regulations (33 CFR 322.5c) which address the issue of concurrent consideration of permit requirements associated with a navigation project and formulation of the project itself. The ER requires that the formulation of navigation projects shall include consideration of certain activities to be conducted by project beneficiaries which are subject to the DA regulatory program and which are necessary for the full realization of benefits. The ER specifies that after those activities to be conducted by project beneficiaries that necessitate a DA permit are identified, those activities should be addressed in the environmental documentation of the project and that the more detailed analysis for permitting purposes will proceed concurrently with planning, engineering and design. The ER also directs that DA permit activities shall be addressed in conjunction with public meetings or workshops held during the project planning process. Permit applicants are, however, still required to obtain state and local approvals, such as CZM determinations and 401 certifications.

PROPOSED ARMY POSITION: Do not support. Army should generally support the issue raised by AAPA but advise that existing guidance already accomplishes the objective of the proposal. We should reiterate that consolidated procedures will not jeopardize the normal review requirements necessary to comply with law and that state and local permits are still the applicant's responsibility. Furthermore, consolidation will not preclude requirements for information from the applicant/sponsor that may be necessary for adequate review. The scope of addressing the issue within existing authority (i.e. under existing guidance) must be limited to near-term, reasonably predictable non-Federal activities. Activities for which plans are not yet available should not be included in a consolidated approval process (i.e. the level of detail for non-Federal activities should be comparable to that of the Federal project under consideration. Army would oppose legislation to broaden the scope of the consolidated process beyond that point.

Senator Burdick
7H

SUBJECT/ISSUE The ability of local sponsors to plan (section 203) and construct (section 204) Federal projects should be expanded to include small navigation, continuing authority projects (Section 107, Rivers and Harbors Act of 1960).

DESCRIPTION: Testimony by Gary Failor for the American Association of Port Authorities on 17 March 1988 before the Senate E&PW Committee

DISCUSSION: The current purpose of Section 203 is to prepare a study that leads to Congressional authorization of a project. Reimbursement to the non-Federal interest of the Federal share of study costs can occur only if the project is authorized by any provision of Federal law enacted after the date of the study's submission to the Secretary. Clearly, Section 203 does not apply to the 107 projects since 107 projects are not individually authorized. We have also decided that Section 204(e), reimbursement, should not be used for 107 projects. This decision is based on two factors. First, for navigation projects where there is a clear Federal interest, there does not appear to be any advantage to the local sponsor for invoking 204(e). In order for a project to qualify for reimbursement, the Secretary must make specific findings with regard to project economics and environmental impacts, and approve the construction design. By the time such findings could be made, the Corps itself should be ready to undertake the work. This saves the local sponsor the trouble of coming up with the full cost of construction (reimbursement under 204(e) cannot take place until the project is complete) and removes any risks that the local sponsor will not be reimbursed (reimbursement is dependent on future appropriations). Second, we feel that by restricting 204(e) to projects specifically authorized by Congress, we are giving Congress the proper level of notification and control over the program. Modifying Sections 203 and 204 so that they would apply to the continuing authority program could reduce the extent of Congressional oversight over the Corps navigation program, and lead to increased pressure to fund small navigation projects that have marginal national economic value or are composed primarily of recreation benefits. The only reasonable instance where some consideration might be given to making Section 107 projects eligible for implementation under Section 204 might be in those cases where the sponsor owns a dredge and desires to use it in the interest of reducing costs to the Federal Government and non-Federal partner. On the other hand, we would expect the dredging industry to oppose the Corps support of such a proposal.

PROPOSED ARMY POSITION: Oppose. We believe that the Sec 107 program is a relatively efficient, simple and non-controversial process that should not be modified without compelling justification. Furthermore, with the exception noted above, the proposal does not seem practical, with respect to saving time, Congressional oversight, or maintaining current budget priorities.

Senator Burdick
Question 7i

SUBJECT/ISSUE: Requirements of Sec 208 of PL 99-662 should be adjusted to allow a more appropriate identification of project beneficiaries and to reduce the uncertainties associated with the use of the fee for financing projects.

DESCRIPTION: Testimony by Gary Failor for the American Association of Port Authorities on 17 March 1988 before the Senate E&PW Committee

DISCUSSION: We agree the ports need adequate authority to enable them to collect port and harbor dues and we understand the controversy associated with the Section 208 provision during development of the Water Resources Development Act of 1986. Before Section 208 is modified, however, AAPA and the ports should provide a convincing case that Section 208 has been demonstrated to be inadequate to allow non-Federal interests to collect duties or fees. Port authorities and port users are likely to have strong divergent points of view as to whether or not Section 208 should be modified. This is especially true for those port users whose vessels do not require the deeper drafts or other improvements for which the port authorities are seeking to collect fees. In part, because of the divergent opinions of these interests, the Army has adopted a neutral policy stance with respect to this section.

PROPOSED ARMY POSITION: Oppose. We do not believe it is appropriate for the Army to make any recommendations for change to Section 208 at this time without convincing evidence that Section 208 falls short of its objectives. However, we should continue to support the port community's efforts to recover its costs through reasonable local duties or fees.

SENATOR BURDICK
7J

BJECT/ISSUE: Exemption of cargo loaded twice at the same Corps harbor project from paying the harbor use fee twice

DESCRIPTION: Testimony by Gary Failor for the American Association of Port Authorities on 17 March 1988 before the Senate E&PW Committee

DISCUSSION: The .04 percent ad valorem levied on vessel cargo was intended as a user fee which all vessels using harbor channels maintained by the Corps would pay. Although the fee is levied against the cargo, it is intended to compensate the government for the use of the channel by the vessel.

PROPOSED ARMY POSITION: Strongly oppose (Treasury should also review). It is contrary to the user fee concept that was the basis for the ad valorum tax as established in P.L. 99-662. The exemption would be very difficult to monitor and enforce and would reduce the anticipated revenue to be collected. It would also provide an opportunity for abuse and misinterpretation.

SENATOR BURDICK
BA

SUBJECT: Armoring of Chesapeake Bay Bridge Tunnel

DESCRIPTION: Statement of J. Stanley Payne, Jr., Deputy Executive Director and General Counsel, Virginia Port Authority, Commonwealth of Virginia, dated March 17, 1988, before the Senate Subcommittee on Water Resources, Transportation, and Infrastructure, Committee on Environment and Public Works. In his statement, Mr. Payne requests that the cost of armoring the Chesapeake Bay Bridge Tunnel be designated as a Federal cost.

DISCUSSION: Section 201(a) of the Water Resources Development Act of 1986 (WRDA) authorized, inter alia, the Norfolk Harbor and Channels, Virginia, navigation project to be "prosecuted by the Secretary [of the Army] substantially in accordance with the plans and subject to the conditions recommended" in the "Report of the Chief of Engineers, dated November 20, 1981, at a total cost of $551,000,000, with an estimated first Federal cost of $256,000,000 and an estimated first non-Federal cost of $295,000,000..." The plans clearly provide for non-Federal responsibility for armoring the tunnel. Moreover, section 101 of the WRDA, which establishes the new cost sharing for harbor projects, provides that the non-Federal interests shall provide the "lands, easements, rights-of-way, relocations..., and dredged material disposal areas necessary for the project." (Emphasis added.) We are not aware of any authority which would authorize the Corps to assume as a Federal responsibility the cost of armoring the tunnel.

PROPOSED ARMY POSITION: Oppose assuming the cost of armoring the tunnel as this would be an exemption to the cost sharing requirements of WRDA 1986. Army opposes any changes or exemptions which would undermine the cost sharing provisions in P.L. 99-662.

Senator Burdick
BB

SUBJECT: Reversionary Rights to Craney Island

DESCRIPTION: The Statement of J. Stanley Payne, Jr., Deputy Executive Director and General Counsel, Virginia Port Authority, Commonwealth of Virginia, dated March 17, 1988, before the Senate Subcommittee on Water Resources, Transportation, and Infrastructure, Committee on Environment and Public Works. In his statement, Mr. Payne asserted that it was "necessary to acknowledge Virginia's reversionary rights to Craney Island so that the Commonwealth [of Virginia] and City of Portsmouth can start planning the use of this valuable resource of the Commonwealth."

DISCUSSION: The assertion that the Craney Island property which the Commonwealth of Virginia conveyed to the United States is subject to a right of reverter appears to be without merit. The legislation which authorized the conveyance, Chapter 266, Acts of Assembly of 1946, as amended by Chapter 472, Acts of Assembly of 1948, did not contain a specific reverter clause.

The 1946 Act (1) did make the conveyance subject to certain jurisdictional limitations and (2) allowed the Governor, in his discretion, to include such reversions of title and ownership as he deemed proper. The deed, dated 19 June 1948, contained the jurisdictional limitations by appropriate reference to Sections 18, 19, 19(a) and 19(b) of the Code of Virginia, as stated in the authorizing legislation. It did not contain any specific provisions for reversion of title and ownership. Thus, the Governor did not exercise the discretion specifically granted him to include a title reverter clause in the deed.

If any title reverter provisions existed, they had to be incorporated by reference to the Virginia Code sections contained in the authorizing legislation and deed. Prior to initiation of construction, the question of the inclusion in the deed, by reference, to any of the reverter provisions contained in sections 18, 19, 19(a) and 19(b) was addressed in an opinion from the Attorney General of Virginia dated August 28, 1953 (see attachment.) His opinion was that the only reverter provision applicable to this conveyance was the one in section 19 which provided that title would revert to the Commonwealth if the United States failed to recognize the reservations of power and jurisdictional limitations, such as the right to serve criminal and civil process. Since the United States has never denied the validity of those reservations, it is not applicable.

PROPOSED ARMY POSITION: Oppose the assertion that the Craney Island property is subject to a right of reverter.

SENATOR BURDICK
8C

SUBJECT: Amendment to Sec 101 (a) (4) of WRDA 86 - Credits for Utility Relocations on Navigation Projects.

DESCRIPTION: Statement of Stanley Payne, Deputy Executive Director, and General Counsel of the Virginia Port Authority, concerning the fact that sponsors for port projects do not receive credit for costs associated with utility relocations.

DISCUSSION: The Act states that for navigation projects, sponsors are responsible for an additional 10% of the cost of general navigation features, to be repaid over a period not to exceed thirty years after construction. Against this requirement, credit can be given for the value of lands, easements and rights-of-way acquired and relocations (LERR's) performed by sponsors, but not utility relocations. Sponsors must perform or assure the performance of all utility relocations, and for projects with depths over 45 feet, one-half of the cost of any necessary utility relocation shall be borne by the sponsor and one-half by the utility owner.

PROPOSED ARMY POSITION: SUPPORT. This provision is part of ASA(CW)'s legislative package, S. 2101 and S. 2100.

SENATOR BURDICK
8D

SUBJECT: Standards for Implementation of Section 933, P.L. 99-662 (disposal of dredged materials on beaches)

DESCRIPTION: Source: Testimony of Virginia Port Authority on 17 Mar 88 before Senate E&PW Committee. Request: that Committee investigate Corps implementation of Section 933, which provides for Federal cost sharing in placement of dredged material (from Federal navigation projects) on beaches, to insure standards fit with Congressional intent. (There is an implied presumption that such an investigation might result in a further legislative proposal.)

DISCUSSION: In support of its request, Virginia Port Authority stated that if Corps standards are unreasonably strict few projects will qualify. Corps criteria for Section 933 proposals, as established in EC 1165-2-142, 15 Dec 87, are: (1) Placement of the material on a beach and Federal participation in the costs must be requested by the State in which the beach lies; (2) The added cost of such disposal must be justified by the benefits associated with protection of the beach; (3) Storm damage reduction benefits must exceed 50% of the total benefits, unless the work is economically justified by storm damage reductions alone; (4) The beach must be open to the public; (5) Placement of the material on the beach must be environmentally acceptable; (6) Local interests must pay 50 percent of the added cost of disposal above the alternative least costly method of disposal; and (7) Local interests must provide (without cost sharing) any necessary additional lands, easements, rights-of-way, and relocations.

PROPOSED ARMY POSITION: Do not support. Corps standards for Section 933 proposals either derive directly from the Section 933 legislation or are common (economic justification, open to the public, environmental acceptablity) with the established standards for Corps involvement in any other kind of shore protection project. We will willingly participate in any reevaluation of our Section 933 standards, but we feel that reevaluation is unneeded.

Senator Burdick

BE

SUBJECT: Virginia Port Authority Request for Reversion of Portions of Craney Island Disposal Area Near-Term

DESCRIPTION: In his testimony of March 17th, Stan Payne (VPA) asked that the Committee direct the Corps to include in its long term disposal study an evaluation of the technical feasibility of having parcels of the disposal area revert in the near-term rather than wait "many years" for the end of the useful life of the site.

DISCUSSION: The Corps is conducting a study to identify a long-term disposal plan for the area. An interim study, to address the needs of the inner harbor area, is scheduled to be complete in July 1990. The final study, covering the outer harbor area, is scheduled to be completed in 1992. The interim study is addressing the need for and feasibility of replacing and/or expanding Craney Island to satisfy long-term disposal needs. Numerous alternatives are under consideration, including ocean disposal and continued use of the existing Craney site. No conclusions have been reached by the Norfolk District at this point.

PROPOSED ARMY POSITION: We do not believe that any reverter rights exist as we described in response to that direct question. However, we do not object to looking at the advisability of partial near-term reversion.. from a total perspective, not just "technical"...provided; however, that any transfer of title to the State which might be found feasible includes appropriate compensation for the United States Government. In addition, the optimization of dredged material disposal requirements for Federal navigation projects must be the first consideration.

Senator Burdick
Question 9a

SUBJECT/ISSUE: Authorization of Corps project for navigation in the vicinity of Olmsted, Illinois, replacing Lower Ohio River, Locks and Dams 52 and 53, Illinois and Kentucky.

DESCRIPTION: Testimony by Dr. David C. Campbell of the National Wildlife Federation on 17 March 1988, before Senate E&PW Committee. Dr. Campbell in his testimony requested the Committee on E&PW withhold judgement on Olmsted Locks and Dam for the following reasons:

DISCUSSION:
Construction could interfere with the nesting and feeding patterns of the Bald Eagles and wintering waterfowl, particularly Canada Geese.

ARMY POSITION:
The Corps is aware of the nesting and wintering Bald Eagles and wintering waterfowl. General concepts of the environmental monitoring plan for the Olmsted alternative were provided in the Final EIS. A cooperative agreement with Kentucky Department of Fish and Wildlife Resources was signed in February 1988 to continue joint monitoring to observe the patterns of the Bald eagles. Data obtained from this effort along with data from observations of Canada geese will be used to assess the potential effects of construction of the Olmsted project. Measures to minimize or mitigate adverse effects will be addressed and coordinated with the US Fish and Wildlife Service, Kentucky Department of Fish and Wildlife Resources and Illinois Department of Conservation should impacts be determined likely to occur.

DISCUSSION:
The 1200' locks were rehabilitated in 1987. The Director of the Illinois Department of Transportation believes that innovative repair to the existing facilities could improve their structural integrity, operating performance, and service life.

ARMY POSITION:
Limited repair and maintenance was performed on the 1200' locks at L&D 52 and 53 during the period of 1982-1986 as a temporary means of extending the projects use.

Continued maintenance and rehabilitation of the existing Locks and Dams 52 and 53 in lieu of capital intensive reconstruction was a principal consideration during the initial screening phase of the Lower Ohio River Navigation Improvement Study process. This alternative was rejected since the present condition and stability of the existing Locks and Dams 52 and 53 make it inherently risky to attempt to maintain these facilities The existing Locks and Dams 52 and 53 structures are some 56 years old and each has a main lock chamber that was constructed as a temporary facility. The condition of the existing locks and dams is characterized as deteriorating from corrosion, erosion, and operational "wear and tear" after a half-century use. The most significant concern, however, is that both structures contain sections (dam and/or lock) that have foundation stresses which significantly exceed current design criteria under normal operating conditions. Project foundations simply cannot be rehabilitated.

DISCUSSION:
According to the Illinois Department of Transportation, the Corps feasibility study had understated the capacity of the existing facilities and overstated potential benefits.

ARMY POSITION:
On May 12, 1986, representatives from the Corps and the State of Illinois met to discuss several items concerning the feasibility report. During this meeting, the Director of the Illinois Department of Transportation indicated they previously had questions about the recommended plan's economic benefits, and that a re-analysis by his office resulted in a determination that the Olmsted plan was economically feasible.

Annual lockage capacity at Locks and Dams 52 and 53 is estimated to be 127 million tons and 144.5 million tons, respectively. These capacities, as stated above, will be reached by the year 2008 and 2040, respectively. This geographic area represents the 'hub' of America's inland navigation system, thus the importance of an efficient modern locking facility at Locks and Dams 52 and 53 cannot be overstated. From 1983 through 1987, tonnage growth was from 63.7 million tons to 87.3 million tons, a rate of growth which is considerably above the projected growth rates of 3.1 percent increase per annum through 1990 and 1.2 % per annum after 1990 contained in the feasibility report. Through 1987, the actual traffic through the study area is approximately 3.5% greater than projected in the feasibility report. The project is strongly supported by the Inland Waterway User Board, the Governors of both affected states, the navigation industry, and numerous Congressional representatives.

Closing of steel mills has not had a significant effect on traffic through the Locks and Dams 52 and 53 area. The general commodity group including iron, steel and steel products represents a minor portion (less than 10%) of the total traffic in project area.

DISCUSSION:
Congress should require the Corps of Engineers to perform a congestion fee analysis on the traffic at Locks and Dams 52 and 53 using current data.

ARMY POSITION:

As part of the evaluation of non-structural measures in the feasibility analysis, the effects of a congestion fee were assessed using the TOWCOST economic model. The imposition of a congestion fee that would be levied on all users would result in the marginal user leaving the waterway. It would not only reduce lock delays at congested locks but also reduce traffic levels (delays) at other projects. The average annual benefits for implementation of this non-structural measure were computed to be $27.3 million. Assuming zero costs for implementation and management of the congestion fee, the benefits are substantially lower than the annual net benefits of the replacement plans, which range from $196.3 to $205.4 million.

DISCUSSION:

The proposed project appears to have design problems. The Corps estimate of the costs has increased from $566 million in late 1985 to $775 million in early 1988.

ARMY POSITION:

While the project costs have increased from $566 million to $775 million, this increase is not a result of design problems. The cost estimate of $566 million was based on preliminary information in the feasibility phase of the study. The project is currently in more advanced stage of Preconstruction Engineering and Design.

The increase in costs for the Olmsted project are due to the following reasons: 1) design of a pile founded structure located near a seismic zone; 2) providing a navigable pass of unprecedented height; and 3) increasing the cofferdam height.

1) Studies completed to date have provided additional information concerning the potential for and foundation reactions to earthquakes in the project area. In order to protect the structure from the ground motions which will accompany possible earthquakes at the site, significant increases have been made in the quantity of steel pilings for the foundation.

2) It was recognized during the feasibility study that a moveable dam of the height required (about 21 feet) would be unprecedented. The cost estimate has been increased to provide an improved alternate method for raising and maintaining the gates.

3) Hydrologic studies conducted during the early stages of Preconstruction Engineering and Design revealed a need to increase the height of the cofferdam in order to reduce the frequency and duration of construction delays due to high water.

DISCUSSION:

The proposed replacement dam would create a higher and larger reservoir than now exists. Some adjoining lands consist of an unconsolidated clay base that absorbs moisture. Roads, railroads, and houses could slump from the sponge effect, exposing the Corps of Engineers to possible lawsuits.

ARMY POSITION:

The new pool will have a limited effect on existing river levels in the project area. The maximum river level effected by the recommended project is elevation 300 feet msl. Currently this elevation is equalled or exceeded approximately 45% of the time on an annual basis.

DISCUSSION:

Construction of Olmsted would put too great a demand on the Inland Waterway Trust Fund. Assessment of alternative assumptions of outlays and receipts for the Inland Waterways Trust Fund was updated in February 1988, for the third Inland Waterways Users Board meeting, held in Washington on 2 March 1988. The base scenario in this assessment included funding of nine projects including eight authorized for construction and authorized for 50 percent funding from the Inland Waterways Trust Fund by the Water Resources Development Act of 1986, P.L. 99-662, plus one potential but unauthorized construction project, the Lower Ohio Locks and Dams 52 and 53 replacement. Outlays from the Trust Fund for this scenario indicate that sufficient funds would be available to fund these projects.

This projection is for macro-planning purposes only. No final determination has been made of the economic justification, environmental acceptability, cost, size, or location of projects. In addition, no Administration or Corps of Engineers commitment to request funds to proceed with the potential construction of the replacement of locks and dam are implied with this analysis.

SENATOR BURDICK
9B

SUBJECT: Management of Reservoirs for Existing Recreation and Fish and Wildlife Purposes

DESCRIPTION: Testimony by Dr. David C. Campbell of the National Wildlife Federation on 16 Mar 1988 before Senate E&PW Committee

Proposal to add a provision to the WRDA of 1988 giving Corps District Engineers water management authority for reservoir regulation in the interests of downstream recreation and fish and wildlife enhancement.

DISCUSSION: 1. We have limited authority to operate our existing reservoir projects for the purposes of downstream recreation and fish and wildlife enhancement. However, lacking dedicated storage space, the problem becomes one of developing a water control management plan that meets added project purposes without impacting the existing purposes for which storage space was in fact authorized and for which funds, Federal and/or non-Federal, have been, and are being, expended. Questions of sponsorship and cost-sharing aside, the addition of these purposes to our existing projects must be evaluated on a case-by-case basis to determine: a) if the proposed modification to the existing water control plan is hydrologically feasible; b) that the change would not compromise operational integrity, and c) that there would be no impact on existing authorized purposes. The feasibility of meeting these criteria would, at each project, depend upon both the magnitude and timing of the streamflow required for these added purposes. At many of our reservoirs, water released for the authorized purposes incidentally produces the benefits desired for recreation and fish and wildlife. At other projects, changing the timing of releases may meet the criteria and provide the added benefits. At some, constraints brought on by limited storage space and the operational requirements for the existing project purposes will prohibit achieving the added purposes.

2.The proposed provision to the WRDA of 1988, calling for granting new authorities to the District Engineers, would be an infringement on executive authority to delegate levels of responsibility within the Corps of Engineers. Existing Engineer Regulations delegate water control management authority to Division Engineers, not District Engineers. Ref.: ER 1110-2-240. Any provision in the proposed bill affecting our water control management authorities should assign those authorities to the Secretary of the Army.

PROPOSED ARMY POSITION: Oppose. We believe P.L. 99-72, the Federal Water Recreation Act, provides sufficient authority to provide recreation and fish and wildlife enhancement at most Corps projects. If this provision is added, it must be revised to recognize that, after enactment, the actual feasibility of meeting these purposes must be determined on a project-by-project basis by the Corps of Engineers, and will be based on water control studies to determine if all three of the following criteria can be met: 1) the proposed change to the water control plan is hydrologically feasible; 2) the change does not compromise operational integrity; and 3) existing authorized project purposes are not impacted. Further, the bill must be written so that the authority to add these project purposes s granted to the Secretary and not the District Engineers.

Senator Burdick
9C

SUBJECT: Release of hydrologic studies

DESCRIPTION: Statement of Dr. David C. Campbell, National Wildlife Federation, dated March 17, 1988, before the Senate Subcommittee on Water Resources, Transportation, and Infrastructure, Committee on Environment and Public Works. In his statement, Dr. Campbell mentions in the context of feasibility studies the issue of "non-Federal entities, generally permit applicants, view[ing] hydrologic modeling as proprietary, even though they receive credit for the model as non-Federal cost sharing." He further asserts that "Congress should require that if the Corps of Engineers pays for all or part of a study, it should receive the full results of such study, including the model."

DISCUSSION: Dr. Campbell's statement that the Corps "pays" for the hydrologic studies prepared by the non-Federal is not accurate. Section 105(a) of the Water Resources Development Act of 1986 provides that "non-Federal interests [shall] agree, by contract, to contribute 50 percent of such [feasibility] study during the period of such study" and that "[n]ot more than one-half of such non-Federal contribution may be made by the provision of services, materials, supplies, or other in-kind services necessary to prepare the feasibility report." Therefore, the Corps is not paying for the study; rather, non-Federal interests would be providing such study as part of its required cost sharing. In addition, Dr. Campbell mentions that the problem generally involves permit applicants; however, in the context of section 105(a) cost sharing, we are dealing with a potential Federal project, not permit activities.

Notwithstanding the above discussion, Dr. Campbell's statement reflects his concern that if the United States fails to take title, as opposed to a license, to the patents and/or copyright covering the "models" and other related information that the "models" and related information will not be available for release to the public. This title vs. license policy issue has been debated in the patent area for decades. Current thinking, based on experience and reflected in the Federal Acquisition Regulation (FAR) patent rights clauses, is that title should be left with the contractor even in those cases where the U.S. pays for development of the invention. Experience shows that the contractor is best positioned to commercially exploit the invention; therefore exclusivity, i.e. title, is needed to provide the contractor with the necessary incentive to call forth risk capital to commercially exploit the invention. Experience shows that without this exclusivity incentive, patented inventions are not commercially exploited resulting in loss of new industries and the jobs they create. The "models" and related information are probably not protectable by patents but rather by copyrights. However, generally, the discussion of patent rights is equally applicable to copyrights. In any case, the U.S. has never required contractors to transfer title to intellectual property, patents, or copyrights, developed at the contractor's private expense to the U.S. without compensation. If the U.S. is not paying for the study, then it appears inequitable to require the non-Federal interests to transfer title to the U.S. On the other hand, if the U.S. is paying for the study, based on the patent rights experience, it is still advantageous for the U.S. to leave title with the non-Federal interests in accordance with the requirements in the FAR patent rights clauses.

With respect to proprietary data, technical data and computer software, developed at private expense and protected by trade secret law, the FAR's new data provisions provide an excellent balancing of the divergent interests of the parties and can provide guidance for negotiating data rights with the non-Federal interests.

PROPOSED ARMY POSITION: Rights to intellectual property - patents, copyrights and data - resulting from work funded by the in-kind services of non-Federal interests should be determined on a case by case basis by including appropriate intellectual property rights clauses in the local cooperation agreement.

Question 9d

SUBJECT: Non-Federal Sharing of Costs of Inland Waterway Studies

DESCRIPTION: Testimony Dr. David C. Campbell (National Wildlife Federation) on 17 March before Senate Committee or Environment and Public Works. Testimony on S.2100

DISCUSSION: The National Wildlife Federation position is that 100% Federal funding of inland waterways studies is inconsistent with the 50% non-Federal cost share for all other feasibility studies required by the WRDA of 1986. A 50% non-Federal cost share should be required, and if that share is not provided by local interests, it should come out of the Inland Waterways Trust Fund.

PROPOSED ARMY POSITION:

Do not support requiring a non-Federal 50% contribution at this time. Inland waterways and harbors of all types are treated as two distinct categories by the Water Resources Development Act of 1986 (WRDA) because they serve different purposes. Waterways act as a highway or transportation system. It is necessary to plan and develop the waterways as a system, and it would be difficult if not impossible to do so by relying on local initiative and cost sharing. This is further complicated because the WRDA did not define "inland waterways." As a result, the Army must make inland-waterway-vs.-harbor determination on a case-by-case basis, for cost sharing of project construction as well as the feasibility report. Once a definition is determined, there will be a clearer understanding of the implication of inland waterway feasibility cost sharing. Subsequent review may indeed conclude that the Inland Waterways Trust Fund should be used to pay 50% of study costs. This conclusion must be based on a thorough understanding of the impacts on the trust fund and on the inland system, and can only be implemented by Congressional action to amend the law establishing the trust fund.

Senator Burdick
9E

SUBJECT: Cost Sharing for Fish and Wildlife Mitigation Operation and Maintenance

DESCRIPTION: Testimony by Dr. David C. Campbell, National Wildlife Federation, 17 March 1988, before Senate E&PW Committee requested congressional "clarification" of the non-Federal share of the cost of operation and maintenance for fish and wildlife mitigation and enhancement. Testimony appears to recommend that mitigation OMRR be shared the same as first costs of the project, and that enhancement OMRR should be 100 percent Federal for such national benefit measures as endangered species and measures on National Refuges (versus 25% non-Federal)... but such 100% Federal costs are not to be a part of the US Fish and Wildlife Service's budget.

DISCUSSION: With regard to mitigation OMRR, we believe that mitigation costs should be shared in the same manner as other project purposes which cause the need for mitigation. There is no reason that the costs of project purposes should be shared differently for mitigation than any other project features. To date we have not encountered a problem in the cost sharing by locals of part of the OMRR for enhancement features for fish and wildlife. Local participation should help assure that measures are operated and maintained in the most efficient manner. Any provision that has the effect of reducing non-Federal costs is a weakening of the cost sharing reforms of PL 99-662 and is inherently objectionable.

PROPOSED ARMY POSITION: Oppose. We recommend that no legislative changes be made. We believe mitigation costs should not be treated any differently than for other project costs. This assures equitable costs as specified by Congress. It should be recognized that the enhancement provisions, even for endangered species and on refuge lands, are for those measures desired by non-Federal interests, not Federal agencies which have their own funding programs, and the participation by non-Federal interests will help assure that appropriate measures are recommended and will be operated and maintained in the most efficient manner.

SENATOR BURDICK
9F

SUBJECT: Military Benefits of Harbor Improvements

DESCRIPTION: Testimony of Dr. David C. Campbell (National Wildlife Federation) on 17 March before Senate Committee on Environment and Public Works. Testimony on S.2100

DISCUSSION: Section 207 of S.2100 would require the Federal Government to bear that share of harbor project cost that can be attributed to benefits to military and Coast Guard installation, facilities, or vessels. The National Wildlife Federation opposes Section 207, and suggest that the provision be modified if it is retained, to apply only to any attributable cost share in excess of the Federal share of project cost under current law.

PROPOSED ARMY POSITION: The Army opposes Section 207 of S.2100 for three basic reasons.

First, the Corps benefit evaluation procedures should and can identify all project beneficiaries and benefits that are quantifiable, both civilian and military. Project features required by the military are treated as separable elements, and their cost is 100% Federally funded. Accordingly, the identifiable military costs or benefits are accounted for in project evaluation now, and an additional requirement in redundant.

Second, the non-Federal cost share of harbor projects is significantly less than 100% and the Federal share was intended to cover National benefits and preclude the need for a precise allocation of cost of project features used in common by military and commercial vessels. Alternately, the project sponsor can use the benefit evaluation to identify beneficiaries and impose local cost recovery through fees, taxes, or other measures related to benefits. In brief, the project costs attributable to military use and benefits of harbors have been provided for, and there is no need to reopen the issue of what is the fair local share.

Finally, a specific requirment to identify military benefits implies a need to evaluate those benefits differently than non-military benefits. The Corps benefit evaluation procedures are based on the Economic and Enviromental Principles and Guidelines for Water and Related Land Resources Implementation Studies. The Corps benefit evaluation procedures are based on economic theory and apply equally to military and other benefits.

SENATOR BURDICK
9G

SUBJECT: Sunset provision

DESCRIPTION: Testimony by Dr. David C Campbell (National Wildlife Federation) on 17 March before Senate Committee on Environment and Public Works. Testimony on S. 2100.

DISCUSSION: Testimony of Mr. Campbell states that the Committee should provide a five-year sunset provision for projects authorized in S.2100 as was included for projects authorized in PL 99-662.

Section 1001(a) of PL99-662 provides a five-year sunset provision for projects authorized in that Act. Section 1001(b) of PL99-662 provides for deauthorization of all other authorized projects which have not had funds obligated for construction in 10 years. This section requires the Secretary to transmit to Congress every 2 years, a list of all authorized projects for which no funds have been obligated in the last 10 years. Projects on such list are no longer authorized 30 months after the list is transmitted if no funds have been obligated.

Section 103 of S. 2100 provides that the provisions of Section 1001(a) of PL 99-662 apply to projects authorized in that act, except that the five year period would begin on the date of enactment.

PROPOSED ARMY POSITION: Support the position currently in S. 2100.

Senator Burdick
Question 10

SUBJECT: Public Participation in the Decision Making Process Regarding the Operation of Corps Projects

DESCRIPTION:

Source: Testimony by Donald L. Stokley, President and General Manager of the Municipal Electric Authority of Georgia (MEAG) on behalf of the American Public Power Association on 17 March 1988 before the Senate Committee on Environment and Public Works, Subcommittee on Water Resources, Transportation, and Infrastructure on the "Water Resources Development Act of 1988."

The draft legislation would make the provisions of the Administrative Procedures Act (APA), Section 553 of Title 5, applicable to Army Corps of Engineers water resources projects, whether authorized, under construction, or in operation. It would accomplish its intent in part by removing certain exceptions which are currently considered applicable to the projects (ie. exceptions for matters relating to "public property") but which, in the APPA'S opinion, do not apply to other agencies with responsibilities similar to the Corps.

DISCUSSION:

The Corps currently has public involvement provisions for actions which significantly affect the interested public. There are, however, many minor actions in day-to-day project operations which are clearly within agency discretion and for which public involvement is clearly neither necessary nor practicable. We do not oppose public involvement under proper circumstances and are always willing to work with the interested public to identify those circumstances which are appropriate for public involvement.

- Coordination for Harry S. Truman is handled in part through the Truman Coordination Team composed of interested parties, including representatives from the Office of the Governor of Missouri, Missouri Department of Natural Resources, Missouri Department of Conservation, the Office of the Missouri Attorney General, Corps of Engineers, Associated Electric Cooperative, Inc., Southwestern Power Administration, Union Electric Company, Truman Lake Ozark Association, Truman Lake Association, Lake of the Ozarks Association, Osage River Flood Control Association, U. S. Fish and Wildlife Service and U. S. Environmental Protection Agency.

- Coordination for the Southeast is handled in part through major river basin Drought Management Committees composed of interested parties such as representatives of the Corps and the states and utilizes resources from the Southeastern Power Administration (responsible for the contracts with the power customers), the U. S. Geological Survey and the National Weather Service among others.

- Coordination for the Lake Texoma issue involved public meetings at the project with the affected parties. Further, meetings and correspondence occurred between the Corps and the Southwestern Power Administration and the affected local electric cooperatives.

The three examples discussed by the APPA involved public input from all of the parties involved who desired to provide it.

PROPOSED ARMY POSITION: Opposed because the legislation is unnecessary. Public involvement is a basic part of Corps operations and any concerns the public may have can be addressed administratively.

Senator Burdick
Question 11

SUBJECT/ISSUE: Authorization of Corps project in accordance with the Final Phase I GDM on the Chicagoland Underflow Plan, Illinois.

DESCRIPTION: Testimony by Metropolitan Sanitary District of Chicago on 16 March 1988 before Senate E&PW Committee.

DISCUSSION: The district and division engineers recommended implementation of a flood protection plan to reduce basement and street flooding due to sewer back-up which is directly attributable to the inadequate capacity of the Chicago area watercourses. The proposed plan consists of two reservoirs to be constructed in existing quarries at McCook and Thornton, Illinois. The flood damage reduction benefits are based solely on improving the major outlet conditions. The BERH concurs in the recommendations. The report is now under review by the Chief of Engineers and will require subsequent review by the Administration. At October 1987 price levels, the estimated first costs would be $336 million for McCook and $83 million for Thornton.

PROPOSED ARMY POSITION: Oppose. The project review is not complete.

Senator Burdick
Question 12a

SUBJECT: Amendment of Section 913, P.L. 99-662 ("Section 215" agreements)

DESCRIPTION: Source: Testimony of Orange, Riverside and San Bernadino Counties, California, on 16 Mar 88 before Senate E&PW Committee. Legislative proposal: that Section 913, which raises upward from $1 million to $3 million, the amount of non-Federal project construction for which credit or reimbursement may be provided under Section 215, P.L. 90-483, be amended to create a limit of 1% of total project costs in cases where that would be greater than $3 million.

DISCUSSION: As support for the proposal, it is indicated that, in connection with the Santa Ana project, $2.9 million in "compatible" work by Orange County has all but consumed the $3 million eligibility for reimbursement or credit under Section 215. That work, however, was accomplished prior to project authorization, and any credit therefor is subject to determination under the provisions of Section 104 of P.L. 99-662. (Orange County has applied for such credit under those provisions.) The completed Orange County work has no eligibility for reimbursement or crediting under the provisions of Section 215 as amended. Section 215 provides for non-Federal construction of elements of the project as authorized, with reimbursement or credit (subject to the $3 million limitation), only if undertaken after project authorization and after a formal Section 215 agreement therefore has been executed between the non-Federal interests and the Army. No such agreements have yet been proposed in connection with the Santa Ana project; no part of the $3 million limitation has been consumed. It is believed that the $2.9 million of past construction was cited only as an example of non-Federal work which, in different circumstances, might have been undertaken pursuant to Section 215. The real point is the three counties' desire that they have an option to undertake, for credit or reimbursement, a greater share of the Santa Ana project than would be permitted under Section 215 as presently amended.

PROPOSED ARMY POSITION: Opposed. There is a limit on reimbursement of $10 million annually. To raise the limit for the Santa Ana project would use up the entire limit and none would be available for other projects. We oppose raising the reimbursement limit because a higher limit would substantially complicate the budget priority process and reduce the Federal government's ability to manage the program.

Senator Burdick
Question 12b

SUBJECT: Amendment to Section 221 of Public Law 91-611 referenced in Statement of potential non-Federal sponsors of the Santa Ana River Mainstream, California, flood control project, before the Senate Subcommittee on Water Resources, Transportation, and Infrastructure, Committee on Environment and Public Works.

DESCRIPTION: In this statement, the Orange, Riverside, and San Bernardino Flood Control Districts recommend that current law be amended to provide that a local cooperation agreement may reflect that it does not obligate future State legislative or local government appropriations nor require appropriations in excess of the sponsor's authority if either would be inconsistent with State constitutional or statutory limitations.

DISCUSSION: Section 221 of Public Law 91-611 prohibits the Secretary of the Army from initiating construction of a water resources development project until each of the project's sponsors has entered into a legally enforceable written agreement with the Secretary to furnish its required cooperation for the project, which includes providing its share of the funding for the project. Some potential state sponsors, however, were unable to enter into the agreement required by Section 221, because of state constitutional or statutory provisions that prohibit the obligation of future appropriations. This problem was addressed by Section 912(a)(2) of the Water Resources Development Act of 1986 which amended Section 221 to provide that "[i]n any such agreement entered into by a State, or a body politic of the State which derives its powers from the State constitution, or a governmental entity created by the State legislature, the agreement may reflect that it does not obligate future state legislative appropriations for such performance and payment when obligating future appropriations would be inconsistent with State constitutional or statutory limitations." The amendment to Section 221 made by Section 912 removed what the states perceived was a major impediment to the construction of water resource projects. It allowed states to enter into local cooperation agreements for Federal projects in cases where state sponsors previously were precluded from entering into such agreements because of statutory or constitutional prohibitions. The change in law was viewed as an acceptable compromise by Congress - one that struck a reasonable balance between absolute protection to the Federal Government and a return to the law in existence prior to Section 221 when sponsors were only required to furnish non-binding assurances for projects. The Department of the Army supported the enactment of Section 912 believing that the amendment was necessary to facilitate contracting for water resource projects and that States would be reliable partners in water resource development projects with their considerable resources.

The proposed amendment to Section 221 of P.L. 99-662 is intended to extend this special treatment to local governments. Additionally, the proposed amendment is intended to offer relief to the Santa Ana local sponsors from Article XIIIB of the California Constitution. This article provides that the total annual appropriations of a local government such as a county or flood control district, must not exceed the appropriations of the county or flood control district for the prior year subject to cost of living and population adjustments. The proposed amendment would allow the Local Cooperation Agreement (LCA) to reflect that it does not require appropriations in excess of this limitation.

ARMY POSITION: The Department of the Army strongly opposes the proposed amendment to Section 221 of P.L. 91-611. As noted in the discussion above, the proposed amendment has two purposes. First, the amendment would allow the LCA to reflect that it does not obligate future appropriations of local body politics. Second, the amendment would allow the LCA to reflect that it does not require appropriations in excess of the local government's authority.

With respect to the first purpose, the Department of the Army does not believe it is appropriate to extend the amendments made by Section 912 to encompass local governments. As discussed above, the Army supported Section 912 due in large part to the fact that states would remain reliable partners even if the absolute protections of Section 221 were slightly modified. Local governments do not possess the same reliability. Their resource base may be different than a state's and their political leadership subject to more frequent change. If faced with a change in political leadership or unforeseen fiscal problems, local governments might attempt to use the proposed language to escape from their cost sharing responsibilities.

The second purpose of the proposed amendment is objectionable because it would limit the liability of the local sponsor and would allow local sponsors to unilaterally reduce or suspend cost sharing by modifying their legislative authority to appropriate funds. In effect, the amendment provides the local sponsor with a unilateral "escape hatch" from its cost sharing responsibilities. Under the proposed amendment, the Federal Government could enter into a local cooperation agreement with a local government believing that the sponsor was financially capable to meet its cost sharing obligations. Afterwards, the local sponsor could enact local legislation establishing limits to its appropriation authority and refuse to make payments that would exceed its appropriation authority.

Such an amendment is highly objectionable because it will undermine the protections afforded the Federal Government by Section 221. Section 221 was enacted to ensure that local sponsors had full authority and capability to meet the terms of a cost sharing agreement and to pay damages in the event of failure to perform. Based on this, the Department of the Army has been unwilling to allow local sponsors to place limitations on their liability for cost sharing payments. Rather, the local sponsor had to agree to pay its cost shares in full without any limitations. The proposed amendment would legislate an end to this policy by allowing local sponsors to limit their cost sharing liability to the local sponsor's appropriations authority limit. Thus, a local sponsor's cost sharing responsibilities would become subject to the availability of local funds. This is unacceptable because it will lead to an erosion of cost sharing and uncertainty in project construction.

Finally, the purpose of a Section 221 agreement is to establish a binding commitment from the local sponsor to pay its share of the costs of project construction and operation and maintenance. A provision that caveats this commitment based on local funding limitations is inconsistent with that purpose. If a local sponsor has a funding limitation that prevents it from entering into a binding local cooperation agreement the solution is to remove the funding limitation, not to make the local cooperation agreement "less binding." If that is not possible, a local government could enter into an agreement with the State where it would repay the State for the local share of project construction and the State would step into the shoes of the local government and contract with the Government for the project construction, subject to the State's constitutional and statutory limitations on authority.

Senator Burdick
13

SUBJECT/ISSUE: Authorization of studies of flood control projects on the Milwaukee River, Menominee River, Root River, Kinnickinnic River and Oak Creek basins in the City of Milwaukee, Wisconsin.

DESCRIPTION: Testimony of Mr. Gary Gagnon, representing Patrick Marchese, Executive Director of the Milwaukee Metropolitan Sewerage District, before the Senate Environment and Public Works Committee on March 17, 1988, indicated a need for flood control in the subject basins.

DISCUSSION: A number of studies are currently underway, under the Continuing Authorities of Section 205 of the 1948 Flood Control Act, as amended, and Section 14 of the 1946 Flood Control Act. However, the major part of the flood problems is beyond the scope of the Continuing Authorities program. No suitable feasibility study exists for undertaking flood control studies in the area of Milwaukee, Wisconsin. Therefore, prior to initiation of a reconnaissance study, a new study resolution would be required. If that reconnaissance study is favorable, a non-Federal sponsor would have to agree to bear one-half the cost of a feasibility study to define a plan which optimizes net benefits and which is environmentally and socially acceptable. The cost of the feasibility study would be determined during the reconnaissance study.

PROPOSED ARMY POSITION: No objection. However, legislation is not necessary to authorize studies since such work can be undertaken pursuant to a Committee resolution. Inasmuch as flood control is a high priority, and since the testimony on behalf of the Milwaukee Sewerage District indicates a clear understanding of non-Federal sponsor obligations under cost shared studies, a reconnaissance phase investigation for flood control and allied purposes, for the Milwaukee River, Menominee River, Root River, Kinnickinnic River and Oak Creek basins in the vicinity of Milwaukee, Wisconsin, would appear to be consistent with the current Civil Works program.

Senator Burdick
14

SUBJECT/ISSUE: The allowance of credit of funds already expended by the Clark County, Nevada, Regional Flood Control District which would be eligible for inclusion in the non-Federal costs of the authorized Los Vegas Valley flood control project.

DESCRIPTION: Testimony of Ms. Virginia Bax-Valentine, Chief Engineer and General Manager, Clark County Regional Flood Control District, Nevada, on March 17, 1988 before the Senate E&PW committee requesting language that would allow credit for the expenditure of non-Federal funds associated with flood control works which the county has or is constructing.

DISCUSSION: Section 104 of PL 99-662 authorizes and directs the development of guidelines which include criteria for determining whether work carried out by local interests is compatible with a Federal project for flood control. Compatible work which was carried out prior to project authorization, before November 17, 1986 but after November 17, 1981, may be considered part of the project and credited against the non-Federal share of the cost of the project, if the local sponsor applied for consideration of such work not later than March 31, 1987. The Clark County Regional Flood Control District has applied for credit under the provisions of Section 104 of PL 99-662. Local work to be carried out after November 17, 1986 must receive Army approval prior to construction to be eligible for credit, taking into account the economic and environmental feasibility of the project.

PROPOSED ARMY POSITION: Oppose. Given that the Clark County Regional Flood Control District has already applied for the consideration of credit under the guidelines (33 CFR Part 240) prepared in accordance with Section 104 of PL 99-662 it would be redundant to include language regarding credits for work performed by the Clark County Regional Flood Control District in the current authorization bill.

SENATOR BURDICK
15

SUBJECT/ISSUE: The sale of anticipated environmental benefits of the proposed Rancho Palos Verdes project to the Ports of Los Angeles/Long Beach for use as mitigation for the environmental impacts of the adjacent Los Angeles - Long Beach Harbor Deepening project. The receipts of this sale would be used to finance the local sponsors cost sharing responsibilities for the Ranch Palos Verdes project.

DESCRIPTION: Testimony by Mr. Dennis McDuffy, City Manager of the City of Rancho Palos Verdes, California on March 17, 1988 before the Senate E&PW committee requesting the committee to prepare language that would encourage the sale of environmental benefits between the projects.

DISCUSSION: The City of Rancho Palos Verdes has within its jurisdiction a large urban landslide that has destroyed 170 homes thus far. The city has expended over $4,000,000 to stabilize the upper reaches of the slide. Funds in the amount of $250,000 were appropriated this year, allowing the Corps of Engineers to initiate a reconnaissance level investigation into the feasibility of stabilizing the remaining coastline portion of the slide and further reducing property damage. The purpose of the reconnaissance investigation is to verify the problem and identify potential solutions; determine whether planning should proceed into the feasibility phase based on a preliminary appraisal of the Federal interest, costs, benefits and the environmental impacts of the potential solutions; provide an estimate of the time and costs required for the feasibility phase and assess the level of interest and support by a non-Federal sponsor. At this time it is not known whether or not any proposed solution would have its own mitigation requirements let alone the nature and magnitude of any environmental benefits to be generated. Further, the nature of the mitigation requirements for the Los Angeles/Long Beach Harbor Deepening have yet to be finalized. Thus, it is impossible to determine at this early stage whether the nature of the impacted resources involved in both studies would lend themselves to such a concept, i.e., are the same type of resources involved.

Given the nature of many environmental resources it is very difficult to accurately assess their economic worth, unless an established market already exists, e.g., commercial fisheries, therefore, the type of sale proposed by the City of Rancho Palos Verdes is further complicated.

Philosophically the idea of marketing the environmental benefits of one water resources project to mitigate impacts of another project appears very similar to mitigation banking. The difficult issue is how to value the resource and whether or not the tradeoff between unlike resources is appropriate in this case.

PROPOSED ARMY POSITION: Because of the uncertainties, we oppose this proposal at this time. The reconnaissance investigation for Rancho Palos Verdes should be allowed to be completed and the City of Rancho Palos Verdes encouraged to locate another source of funding other than the sale of environmental benefits.

Senator Burdick
Question 16

SUBJECT/ISSUE: Use of FEMA funds as partial payment of the non-Federal share of any Federal project proposed as a result of the Corps current reconnaissance investigation of the Santa Monica breakwater.

DESCRIPTION: Testimony by Mr. Jim Conn, Mayor of Santa Monica, California, on March 17, 1988, before the Senate E&PW committee requesting that language be placed in the current authorization bill directing FEMA funds to be included as part of the non-Federal share of any future authorized Corps project at the Santa Monica breakwater.

DISCUSSION: Army policy regarding this matter is that a non-Federal sponsor's ability to utilize other Federal funds to meet its cost sharing requirements is appropriate only when the law under which such Federal funds were provided specifically authorizes such use. Because it must ensure that its grant funds are properly applied, and because it has the greatest expertise in administering the laws that establish its grant programs, the grantor agency has primary responsibility for determining whether its grant funds may be used on Corps projects.

PROPOSED ARMY POSITION: Oppose. Cost sharing under PL 99-662 was specifically designed to require a non-Federal cost contribution to assure that the project has local support and that the scope of the project is proper. Allowing non-Federal sponsors to use other Federal funds to meet its non-Federal responsibility would defeat the purpose behind the cost sharing provisions of PL 99-662.

Senator Burdick
Question 17

SUBJECT/ISSUE: Regarding the Redondo Beach (King) Harbor, California Investigation authorized by Section 809 of PL 99-662, the local sponsor desires to have the proposed project qualify for 35 percent local cost sharing and have the O&M be a full Federal responsibility. The project was authorized at 50-50 cost sharing without the benefit of feasibility studies. It was originally envisioned as a project with primarily recreation outputs. However, with the feasibility studies nearly complete, the primary project outputs are storm damage reduction. Additionally, the local sponsor desires to have the Corps of Engineers examine breakwater heights greater than 22 feet.

DESCRIPTION: Testimony by Mrs. Kay Horrell, Councilmember, Redondo Beach, California on March 17, 1988 before the Senate E&PW committee requesting that the project authorized by Section 809 of PL 99-662 be amended to authorize the Corps of Engineers to construct the breakwaters higher than 22 feet and to specify the cost sharing percentage for this project should be in accordance with Title I, i.e., 35 percent local share.

DISCUSSION: Specific provisions in the Water Resources Development Act of 1986 (PL 99-662) take precedence over the general provisions. Therefore, Section 809 of the Act pertaining to Redondo Beach and specifying the 50-50 percent cost sharing would apply, even though Section 103 (a) of the Act provides for 35-65 percent cost sharing for projects providing hurricane and storm damage protection. The authorization of improvements at Redondo Beach are contingent upon a favorable report of the Chief of Engineers, i.e., a feasibility report (See Section 809(2)). Feasibility studies have determined that a 20 foot breakwater crest is the plan which maximizes the net economic benefits (NED plan). The Corps will conduct model studies during the Preconstruction Engineering and Design (PED) phase to determine if a breakwater of this height will provide adequate protection for the harbor area. A new construction authorization will be necessary for a breakwater height greater than 22 feet.

PROPOSED ARMY POSITION: No objection, if modified. Pending the outcome of PED studies it would be premature to authorize an increase of the breakwater elevation at this time, therefore, the revision should be dropped. We have no objection to the generic cost sharing provisions of P.L. 99-662 applying rather than the 50/50 split currently required by law. Also, project O&M must be funded in accordance with P.L. 99-662, i.e., 100 percent non-Federal, unless there are commercial navigation benefits.

Senator Burdick

18

SUBJECT: Upper Mississippi River Environmental Management Program Cost Sharing

DESCRIPTION: The Upper Mississippi River Basin Association wants Congress to amend the WRDA '86 to modify O&M requirements for fish and wildlife enhancement located on national refuge lands.

DISCUSSION: Section 906(e) of the WRDA '86 requires that O&M for f&w enhancement activities be 25% non-Federal; however, implementation costs can be either 100% Federal or 75% Feredal, depending on whether benefits are "national" (or meet certain other criteria). While the Association does not object to the rules for sharing first costs it does not approve of the across-the-board 25% non-Federal requirement for O&M; its argument is that there should be a provision for 100% Federal O&M for projects located on national wildlife refuges. They claim that this raises serious policy questions: refuge lands are under the management responsibility of the USF&WS...use of state funds on lands for which the state has no authority is the questionable notion. The association wants to modify section 906(e) to reflect the O&M is 25% non-Federal except when the work is located on lands managed as a national wildlife refuge.

PROPOSED ARMY POSITION: Oppose. This is a reduction in the non-Federal cost sharing requirements of the WRDA '86. We are not aware of problems with state funds being used on refuge lands; in deed, section 906(e) should be read to imply such authority.

We believe that the requirement for 25% is consistent with the philosophy in the WRDA '86 regarding O&M. In all cases except the inland waterways system, O&M is a non-Federal responsibility...100% in most cases, and about 40% for commercial harbors (through user fees). We see no justification for giving fish & wildlife enhancement special treatment over other purposes. Furthermore, while fish & wildlife activity is currently of necessity low budget priority, keeping a non-Federal role in O&M will increase its liklihood for support in the budget.

Senator Burdick

19

SUBJECT: Beach Nourishment Activities ("Florida Dredging")

DESCRIPTION: State of Florida, through Senator Graham's office, wants legislation to assure that the State is given sufficient time to raise its share of funds for beach potential nourishment activities that are incidental to Corps navigation dredging.

DISCUSSION: We have very little information on this. Apparently there has been at least one instance where the State was not given sufficient time to raise their share of funds for a Section 933 project (authority to participate in discharging sand on beaches if State pays 50% of the added cost over open water disposal). The State was willing to pay its share, but could not provide it in on a schedule compatible with the Corps dredging plans. The issue was not the amount of cost sharing..in fact, the State was reported to have been prepared to pay 100% of the added cost if it had time to raise the funds. Senate staff indicates that there is no attempt to affect the existing process other than to get mor time for the State to secure its share.

PROPOSED ARMY POSITION: If the proposal is as described above, we see no need for legislation to assure locals have "adequate" time. Corps District Engineers have the flexibility to work with sponsors on such matters; however, they also have a responsibility to conduct projects in a timely, cost effective manner and to efficiently execute contracts. Although a legislative provision to require consideration of state funding schedules does not seem necessary, a flexible proposal might not be objectionable.

QUESTIONS AND ISSUES RAISED AT HEARING ON WATER RESOURCES DEVELOPMENT ACT OF 1988

SENATOR STAFFORD'S QUESTIONS:

1. Special interest provisions and unstudied projects
2. Administration's position on cost sharing and environmental reforms of WRDA of 86
3. Justification for Section 9 of S. 2101 - Corps provide technical assistance to private firms
4. Expanded scope of project feasibility studies
5. St. Lawrence Seaway
6. Other projects likely to be approved by COE within the next six months
7. Recreation User Fees
8. Section 8 of S. 2101
9. Section 10 of S. 2101
10. New Legislative authorities
11. Public participation in Corps project management
12. Comments on S. 2144 - Restoration of Des Plaines River Wetlands
13. Erosion along the Missouri River
14. American Society of Civil Engineers Recommendations
15. Amendments to Sections 912 and 913 of P.L. 99-662
16. VA Port Authority recommendations
17. AAPA recommendations
18. National Wildlife Federation Recommendations
19. Redondo Beach
20. Santa Monica breakwater project
21. Clark County, Nevada

Senator Stafford

1. QUESTION: Secretary Page, one of my major concerns with reporting water resources development legislation out of Committee during this election year is the large number of requests for unwarranted special interest provisions and unstudied projects which we are likely to receive. What support can we expect to receive from the Administration with regard to keeping these types of provisions and projects out of the bill?

ANSWER: The Administration will strongly oppose any attempt to add unwarranted, unstudied project or special interest provisions and we will not support any bill containing such provisions. We believe that getting the Army Civil Works program back onto a 2-year authorization cycle is important to the Nation; however, if the cost of achieving this goal is having to accept a bill with unwarranted special interest provisions and unjustified projects, we will oppose that bill. I cannot emphasize this too much...In my opinion, the addition of unjustified project, programs and modifications and exemptions to cost sharing are the biggest threats to success of a bill this year.

Senator Stafford

2. QUESTION: My other concern with reporting water resources development legislation is that there is likely to be pressure from some quarters to weaken the hard won cost sharing and environmental reforms of the Water Resources Development Act of 1986. What position can we expect the Administration to take in this regard?

ANSWER: The Administration will strongly oppose cost sharing waivers and weakening of the environmental protection of the WRDA '86. The cost sharing rules now in place are working. Sponsors are willing to pay their share for justified projects and studies and this is the best way to assure that only those truly justified and supportable projects and studies will proceed. Because cost sharing is working, there is no justification for undermining the reforms it helped to bring about. Among those reforms, some of which were indirect, are provisions intended to protect or even enhance environmental values. Although current budget constraints preclude us from funding some of these activities, the basic environmental soundness of reforms in the WRDA'86 certainly benefits the environment. We would oppose any legislative attempt to weaken these reforms.

Senator Stafford

3. QUESTION: As you mentioned in your testimony, section 9 of S. 2101 authorizes the Corps to provide technical assistance to private firms which are competing for foreign contracts. Would you describe the justification for this provision in more detail?

ANSWER: Section 9 authorizes the Secretary of the Army to establish a 2-year demonstration program beginning within six months of enactment, to provide supporting services on a nonexclusive basis to U.S. firms that are competing for the planning, design, or construction of projects in foreign countries where the Army Corps of Engineers has an expertise that is not available in the private sector. The firms must agree to pay all costs upfront to use government expertise. In addition, both the Secretary and the private firm must certify that the assistance is not otherwise reasonably and expeditiously available through the private sector.

Representatives of the consulting engineering industry and the Department of Commerce have expressed support of the Army Corps of Engineers assistance to U.S. firms competing for overseas projects. Both recognize that U.S. firms sometimes operate at a disadvantage because many foreign countries are providing technical support to their firms pursuing international work. It is common practice in such international activities for governments of foreign nations to assist their own national firms through technical and monetary assistance. As a result, U.S. firms which are totally on their own can be at a tremendous disadvantage relative to firms of other countries. Second, most clients for international work are national governments in countries which do not have a heritage of a strong private sector and are not used to dealing with completely private organizations. These national governments tend to look for involvement of national governments of the contracting firms in support of those private firms. The Corps can clearly offer the high level of technical expertise and government support needed to enhance the competitive position of U.S. firms.

4. QUESTION: You mention in your testimony that one of your major internal management initiatives is to expand the scope of project feasibility studies so that they include more definitive project information. Is this likely to make feasibility studies more expensive? If so, do you believe that local sponsors are willing to bear these costs? Is the Congress likely to receive better information on which to base project authorizations as a result of this initiative?

ANSWER: Yes, to all three questions. However, we believe the costs will not be great and will be well worth the investment. Such a process is to the advantage of the sponsor because it will allow better financial planning which we believe will provide substantial savings in the long run. The expansion of the feasibility scope will allow more detailed and accurate estimation of the costs of a project. Assurance of better accuracy in the costs of a project will also allow Congress to better consider the budgetary implications of such authorizations.

Senator Stafford

5. QUESTION: What is the Army's position with respect to the inclusion of the St. Lawrence Seaway's proposal in Water Resources Development legislation reported out of this Committee?

ANSWER: We support the St. Lawrence Seaway Development Corporation's proposal on its merits. We do believe, however, that enactment this year of a water project authorization bill is critical to the future of this Nation's water resource program. A decision of whether the Seaway proposal is included in the 1988 Water Resources bill should be made keeping in mind the pressing need for enactment of the water bill.

Senator Stafford
Question 6

6a Q: What other Corps of Engineers projects are likely to receive approval of the Chief of Engineers within the next six months? For each, please provide a project summary.

A. There are 11 project recommendations currently under review by the Chief of Engineers. In addition, three reports were signed by the Chief of Engineers on March 27, 1988: McGrath Creek, Wichita Falls, TX; Chicagoland Underflow Plan, IL; and Lower Mission Creek, CA. Summary sheets for all 14 projects are enclosure 1. Provided that the project documents and analyses are sufficient, review can be completed in the next six months. We must point out, however, that the Administration opposes authorization of any projects until the full Administration review has been completed. This includes an evaluation by the Secretary in consultation with the Office of Management and Budget that the project meets project planning criteria and is consistent with the President's program.

6b Q: Also, please provide a listing of all projects which have been favorably recommended by district offices but have not received the approval of the Chief of Engineers. Along with that listing, please identify the stage of those projects in the Corps review process and when they are likely to complete that stage.

A. There are 7 reports with district office recommendations. A listing, identification of current status, and an estimate of when that status will likely change is provided as Enclosure 2.

STUDY SUMMARY SHEET

LOWER MISSION CREEK, CALIFORNIA

DESCRIPTION: The project is located in the City of Santa Barbara, California. The recommended plan consists of channel improvements and bridge replacements along 1.2 miles of Lower Mission Creek. The plan would provide 100 year frequency flood protection downstream of Carrillo Street and includes measures to mitigate for fish and wildlife and aesthetic impacts.

ESTIMATED IMPLEMENTATION COSTS: (October '87 price level)

Federal	$ 5,909,000
Non-Federal	$ 4,511,000
Total	$10,420,000

STATUS: The final report of the Chief of Engineers is presently being processed within HQUSACE.

STUDY SUMMARY SHEET

MCGRATH CREEK, WICHITA FALLS, TEXAS

DESCRIPTION: The proposed plan supplements and fully complements the proposed project for Lake Wichita, Holliday Creek, Texas, which is reported in House Document 98-219 and authorized by P.L. 99-662, 2nd Session for the 99th Congress. This plan is considered too large in scope and in costs to be incorporated as a modification of the Holliday Creek project and consequently is the subject of a separate request for authorization. The McGrath Creek project is dependent upon the Holliday Creek project in that it requires the Holliday Creek improvements to provide an adequate outlet for its flood flows. The plan consists of a new spillway for the existing Sikes Lake and a 3,600-foot-long concrete-lined channel along McGrath Creek from the new spillway to the confluence with Holliday Creek.

ESTIMATED IMPLEMENTATION COSTS (October 1987 Price Levels):

FEDERAL - $6,800,000

NON-FEDERAL - $2,300,000

TOTAL - $9,100,000

STATUS: The State and Agency review is complete and a final Chief of Engineers Report is currently in process.

ENCL 1

[illegible]

22 March 1988

PROJECT SUMMARY
Chicagoland Underflow Plan, Illinois

PROJECT DESCRIPTION: The recommended plan, as presented in the Report of the Board of Engineers for Rivers and Harbors, dated 18 June 1987, recommends a flood protection plan to reduce basement and street flooding due to sewer back-up which is directly attributable to the inadequate capacity of the Chicago metropolitan area watercourses. The plan consists of two reservoirs to be constructed in existing quarries at McCook and Thornton, Illinois. The McCook Reservoir would encompass about 203 acres and provide about 30,100 acre-feet of floodwater storage for the Mainstream System and 2,000 acre- feet for the Des Plaines System. The Thornton Reservoir, to be combined with an authorized Soil Conservation Service (SCS) reservoir, would encompass about 129 acres and provide 9,600 acre-feet of storage for SCS and 14,600 acre-feet for the Calumet System. Included in the plan are aquifer protection systems, aeration systems, grit removal systems and hydraulic systems.

ESTIMATED IMPLEMENTATION COSTS (October 1987 price levels):

Federal	$314,250,000
Non-Federal	104,750,000
Total	$419,000,000

The report of the Chief of Engineers is under preparation after the 90-day state and agency review, which was completed on 23 February 1988.

STUDY SUMMARY SHEET

COLDWATER CREEK, MISSOURI

DESCRIPTION: The recommended plan includes widening 10 miles of the main channel of Coldwater Creek, enlarging the opening through a downstream railroad embankment, two small levees, a flood forecasting and warning system, a recreation trail along most segments where the channel is widened, and two picnic areas.

ESTIMATED IMPLEMENTATION COSTS: (October 1986 price levels)

FEDERAL - $14,019,000

NON-FEDERAL - $ 6,246,000

TOTAL - $20,265,000

STATUS: The proposed Chief's Report is with BERH to be dispatched for state and agency review.

STUDY SUMMARY SHEET

WEST BANK HURRICANE PROTECTION LEVEE, JEFFERSON PARISH, LA
(Westwego to Harvey Canal)

DESCRIPTION : The project would consist of new and enlarged levees which will provide Standard Project Hurricane Protection for the urban area on the west bank of Jefferson Parish, LA. Construction would be along the previously permitted alignment from Westwego to the V-levee north of Crown Point. From that point the alignment would generally follow the existing V-levee the vicinity of the Estelle Pump Station. From that point it would follow the existing Harvey Canal-Bayou Barataria levee. A segment of new floodwall would extend from the north end of the levee to the Harvey Lock.

ESTIMATED IMPLEMENTATION COSTS (PRICE LEVEL?):

FEDERAL - $43,560,000

NON-FEDERAL - $23,460,000

TOTAL - $67,020,000

STATUS: Final Chief of Engineers Report being prepared.

COYOTE AND BERRYESSA CREEKS, CALIFORNIA

DESCRIPTION: The study area is located at the southern end of the San Francisco Bay, in the cities of San Jose and Milpitas, Santa Clara County, California. The recommended plan for Coyote Creek consists of about 4.0 miles of earthen overflow channels and offset levees. The location of the overflow channel would alternate between the east and west sides of the creek thereby requiring crossovers. The plan also includes a concrete trapezoidal channel under Highway 237 and a concrete floodwall as well as fish and wildlife mitigation, cultural mitigation and aesthetic treatments. The recommended plan for Berryessa Creek consists of a trapezoidal concrete channel along two unmodified sections of the existing stream with a combined length of approximately 1 mile. Offset levees would be constructed in between these two sections without channel modification. The remainder of the creek in the project area is currently an earthen trapezoidal channel which will be lined with reinforced concrete. Remaining features include construction of a concrete lined sedimentation basin, improvements to an existing debris basin and fish and wildlife mitigation.

ESTIMATED IMPLEMENTATION COSTS: (March '86 price levels)

Federal................	$26,792,000
Non-Federal............	$ 8,930,000
Total..................	$35,722,000

STATUS: The report is currently with the Board of Engineers for Rivers and Harbors for review.

STUDY SUMMARY SHEET

GALVESTON BAY AREA NAVIGATION STUDY, TEXAS

DESCRIPTION: Galveston Bay, the largest inland bay on the Texas coast, is in southeastern Texas along the Gulf of Mexico. The study area includes the entire bay area, navigation channels extending to Houston, Texas, and adjacent areas. The components of the recommended plan are:

a. Houston Ship Channel (HSC). A 600-foot-wide by 50-foot deep channel extending from Bolivar Roads to Boggy Bayou, and intermittent reaches of widening to 400 feet from Boggy Bayou to Clinton Island, demarcation of a 25- by 200-foot channel along both sides of the Galveston Entrance Channel extending from the Galveston Channel juncture to the 25-foot contour offshore in the Gulf. Bend easing is recommended at the Bolivar Peninsula side of the Gulf Intracoastal Waterway (GIWW) and HSC junction. Assumption of Federal maintenance dredging is recommended on Carpenters Bayou, an ancillary channel of the HSC.

b. Galveston Channel. A 50- by 450-foot channel at Galveston extending from Bolivar Roads for 3.6 miles.

c. AIDS TO NAVIGATION. This element includes larger range markers, improved marking of turns, and possibly the installation of an electronic position location system.

d. DISPOSAL OF DREDGED MATERIAL. Material from dredging the HSC would be disposed of at seven unconfined areas in the lower bay and two confined disposal areas in the northern part of the bay. Material dredged from the riverine section of the HSC would be disposed of mainly at existing, confined upland disposal sites. Material from dredging the Galveston Channel would be disposed of on Pelican Island in an area already designed for maintenance dredged material disposal.

e. MITIGATION. The mitigation plan consists of 859 acres of artificially constructed oyster reefs which are intended to replace lost net income from project impacts on both oyster, shrimp, and finfish resources as well as replace lost sport fishing opportunities. Shell material would be obtained from sources in Louisiana. Mitigation is associated with the recommended plan elements for the HSC.

ESTIMATED IMPLEMENTATION COSTS (PRICE LEVEL?):

FEDERAL - $147,005,000

NON-FEDERAL - $205,561,000

TOTAL - $352,566,000

STATUS: Division Engineers Public Notice was November 30, 1987. The Report is currently under review by the Board of Engineers for Rivers and Harbors.

STUDY SUMMARY SHEET

Rio de la Plata, Puerto Rico

DESCRIPTION: Extensive flooding in the study area provides quantifiable average annual equivalent damages of $7.2 million. The recommended plan provides protection against the SPF and consists of levees, and channel works.

ESTIMATED IMPLEMENTATION COSTS (May 1987):

FEDERAL	- $32,946,000
NON-FEDERAL	- $21,077,000
TOTAL	- $54,023,000

STATUS: The report is scheduled for presentation at the next BERH meeting.

STUDY SUMMARY SHEET

PALO BLANCO AND CIBOLO CREEKS IN THE VICINITY OF FALFURRIAS, TEXAS

DESCRIPTION: The recommended plan provides for a 5.6 mile-long levee and 1.8 mile-long pilot channel to divert floodflows in Palo Blanco and Cibolo Creeks away from Falfurrias. The plan also includes a ring levee to protect the sewage treatment plant, as well as requiring the acquisition of flowage easements on 11,000 acres of land.

ESTIMATED IMPLEMENTATION COSTS (October 1987 Price Level):

FEDERAL	- $15,900,000
NON-FEDERAL	- $15,900,000
TOTAL	- $31,800,000

STATUS: The State and Agency review is complete and a final Chief of Engineers Report is currently in process.

STUDY SUMMARY SHEET

UPPER JORDAN RIVER, UTAH

DESCRIPTION: The project is located in the north-central portion of Utah, south of Salt Lake City. The recommended plan is to divert flood waters from Mill Creek, through a 1.4 mile long conduit, to the Hillview Detention basin located on the I-9 Ditch. The Hillview Detention basin, planned for construction by local interests in the mid-1990's, would be enlarged for temporary storage of floodwaters. Following a flood event, water would be released into the I-9 Ditch where it would flow into the Big Cottonwood Creek and then into the Jordan River.

ESTIMATED IMPLEMENTATION COSTS: (October '86 price level)

Federal..................$4,820,000

Non-Federal..............$2,530,000

Total....................$7,350,000

STATUS: The report is presently with the Board of Engineers for Rivers and Harbors for review.

STUDY SUMMARY SHEET

Port Jersey Channel, Bayonne, NJ

DESCRIPTION: The existing navigation channel is not deep enough to fully accommodate the container vessels that import/export containers to and from the metropolitan area of New York. The recommended plan provides for deepening the existing 35-foot (MLW) non-Federal channel to 41-foot (MLW) throughout its entire length.

ESTIMATED IMPLEMENTATION COSTS (October 1987):

FEDERAL - $ 6,937,000

NON-FEDERAL - $ 6,429,000

TOTAL - $13,,366,000

STATUS: Proposed Chief's Report out for State and Agencies review and comment.

March 27, 1988

STUDY SUMMARY SHEET

Port Sutton, Florida

DESCRIPTION: Current problems relate to the light-loading of deep-draft bulk vessels due to existing channel depths in the terminal channel. The proposed plan provides for a channel 200 feet wide at a depth of 43 feet and 3,700 feet long.

ESTIMATED IMPLEMENTATION COSTS (October 1987):

FEDERAL - $1,155,000

NON-FEDERAL - $1,155,000

TOTAL - $2,310,000

STATUS: The final report of the Chief of Engineers is currently being prepared for his signature.

STUDY SUMMARY SHEET

Mill Creek, Tennessee

PROJECT DESCRIPTION: The recommended plan for flood damage reduction in the Mill Creek basin, consists of two unregulated dry-bed reservoirs, one on Mill Creek and one on Sevenmile Creek; a 0.8-mile section of the channel widening on Sevenmile Creek; expansion of an existing flood warning system; and environmental design features, including creation of deep pools in Sevenmile creek, and selected landscaping. The dams would pond water only during periods of flooding.

ESTIMATED IMPLEMENTATION COST (October 1987):

FEDERAL - $6,100,000

NON-FEDERAL - $6,100,000

TOTAL - $12,200,000

STATUS: Project completed 90-day agency review. Responses to comment letters are being drafted along with the Record of Decision.

March 22, 1988

22 March 1988

PROJECT SUMMARY
Fort Wayne, Indiana, Flood Damage Reduction Project

PROJECT DESCRIPTION: The recommended plan, as presented in the North Central Division Engineer's Notice dated 30 September 1987, involves upgrading 35,000 feet of existing levees and floodwalls and construction of new levees as needed to tie into high ground. The project is designed to provide a 200-year level of protection. The recreation component includes hiking and biking trails along the line of protection.

ESTIMATED IMPLEMENTATION COSTS: (October 1987 price levels):

Federal	$11,493,200
Non-Federal	$3,988,400
Total	$15,481,600

STATUS: The report is currently under review by the Board of Engineers for Rivers and Harbors (BERH). While under review at the BERH, the recommended plan changed. The new selected plan is essentially the same except the level of protection is 100-year. The estimated implementation costs, at October 1987 price levels for the 100-year plan are:

Federal	$ 9,314,700
Non-Federal	$3,262,300
Total	$12,577,000

Listing, Status, and Schedule for those Projects Which Have Been Favorably Recommended by District Offices but Have Not Received the Approval of the Chief of Engineers.

1. Nogales Wash, Arizona. This report is currently with the Commander, South Pacific Division, for review. A Public Notice is anticipated by April 30, 1988.

2. Redondo Beach, California. This report is currently with the Commander, South Pacific Division, for review. A Public Notice is anticipated by April 30, 1988.

3. River Des Peres, Missouri. This report is currently with the Commander, Lower Mississippi Valley Division, for review. A Public Notice is anticipated by April 30, 1988.

4. Main Stem Passaic River, New Jersey & New York. The report is scheduled for presentation to the BERH following the next meeting.

5. Myrtle Beach, South Carolina. The report is scheduled for presentation to the BERH following the next meeting.

6. Ecorse Creek, Wayne County, Michigan. The report is scheduled for presentation to the BERH following the next meeting.

7. Great Lakes Connecting Channels and Harbors, Michigan. The report is presently with the BERH. Its further progress requires the identification of a local sponsor.

Senator Stafford
Question 7

QUESTION 7. In your testimony, you state that part of the justification for section 6 of S. 2101 is to provide for the improvement of recreational facilities at Corps of Engineers projects. However, in your Fiscal Year 1989 budget request, it appears that the recreational user fee revenues that are assumed merely replace ongoing appropriations levels and provide for no new level of improvement at Corps recreation facilities. How does your budget request square with your justification for recreational user fees?

ANSWER: Our anticipated additional recreational user fee revenue will both replace prior funding levels and provide the capability to fund improvements at the completed project. Additionally, all revenue collected that exceeds our present estimates of $19 million annual receipts will be available for improvements.

Senator Stafford
Question 8

8 Q: With regard to section 8 of S.2101, please provide additional justification, and, if possible, please provide examples of where the ability to transfer funds to other agencies would have or could save dollars. What assurances can the Corps give the Committee that this authority would not be used to provide less mitigation or mitigation of a less desireable quality than would otherwise be provided without this new authority? Could this authority in any way be used to circumvent any project specific requirements for in-kind replacement of fish and wildlife resources losses such as those required in the Tennessee-Tombigbee Waterway wildlife mitigation project authorized in section 601(a) of Public Law 99-662? In the development of Section 8, were other Federal agencies, particularly the Fish and Wildlife Service, asked to comment? If so, what comments or suggestions did they have?

A: The aim of Section 8 is to broaden the range of alternative means we would have available to provide mitigation for project impacts. It is especially important to providing in-kind habitat mitigation for wildlife. Often, in a given river basin or state, there is little in-kind habitat available for acquisition, but there are holdings by other agencies. Opportunities to transfer or otherwise acquire title to those lands, could be blocked by multiple use conflicts, or by inefficiencies as management units. Intensive management by the current agency may be the most cost effective means to realize such an opportunity for wildlife management. Such opportunities to mitigate on lands managed by the Secretary of Agriculture were possibilities on both the Tennessee-Tombigbee Waterway project and the Santa Ana flood control project. The level of need for mitigation, considering both quality and quantity, would be a separate and earlier consideration. Repeating, the opportunity to transfer funds to other agencies would only increase the alternatives available, to us for consideration, in determining how to meet such needs. This should work to save dollars and to increase opportunities for in-kind rather than out-of-kind mitigation. In the normal process of proposing this legislation, the Office of Management and Budget did solicit comments by other agencies. There were no objections.

Senator Stafford

9. QUESTION: With regard to Section 10 of S.2101, are the proposed extentions to the Brush Creek project in any way controversial at the local level? If so, please elaborate?

Answer: No sir, there is nothing controversial with the extentions to the Brush Creek project.

Senator Stafford

10 Q: Will any of the internal management and process initiatives that you mentioned are being carried out within the Corps now, require any new legislative authorities?

A: We do not need any new legislative authorities at this time, because our initial concentration has been on management and process initiatives which can be implemented quickly and which are within our existing authority. We are continuing to examine our procedures for changes which will require a longer time to implement, but we do not yet know whether any of these will require new legislative authorities.

Senator Stafford
Question 11

QUESTION NO. 11: Please provide your assessment of the American Public Power Association's suggested amendment to Section 925 of P. L. 99-662 regarding increased public participation in Corps project management decisions. What changes, if any, could be made to their suggested amendment to improve its acceptability or workability?

ANSWER: The Corps current policy mandates public involvement in the making of major decisions. Accordingly, the proposed legislation is not necessary to insure meaningful public involvement.

Although the Corps encourages public involvement in the making of major decisions and does not believe the proposed legislation is necessary, they would be glad to work with the APPA if a problem exists with regard to openness and public participation in the decision making process.

Senator Stafford
Question 12

QUESTION 12: Please provide comments on S.2144.

ANSWER: The Nation is becoming increasingly aware of the need to develop new and innovative ways to protect and enhance our wetlands resources. The Corps has a great deal of experience and technical capability that could be utilized in this effort. Furthermore, in the exercise of our regulatory program responsibilities, we would likely find useful any new technologies or methodologies developed as a result of wetlands research. Unfortunately, in this time of constrained funding and concern over high national deficits, our program priorities for the present and near future must necessarily give primary emphasis to the mainline outputs of commercial navigation, flood damage prevention, hurricane and storm damage prevention, and hydropower and/or municipal or industrial water supply in conjunction with these mainline outputs. If funding constraints were not so limiting and, if appropriate cost sharing were required, we could more easily be supportive of and participate in achievement of the general objectives which underlie the Des Plaines Project. We cannot express support at this time, however, for this specific project which has not been studied by the Corps, and, in fact, must oppose the project-specific authorization at this time of all such projects which have not completed the Administration's review procedures.

QUESTION: Please describe the Corps role to date.

ANSWER: Various offices of the Corps and the Assistant Secretary of the Army (Civil Works) have received briefings from the proponents on the merits of the project. The Corps has also participated through technical support and advice to the project sponsors.

QUESTION: What are the results and recommendations of any Corps studies or evaluations which have been done to date on this project?

ANSWER: The Corps has conducted no formal studies on this project. The Wetland Research Program has evaluated the proposed scope of the project and concluded that once completed it may be a facility that could provide some of the data requirements identified in the Corps wetland research priority plan. We project that a study of water quality parameters in the range of $60,000 in FY 89 (out of a total wetlands research budget of $750,000) may be possible and consistent with the Corps priority plan.

QUESTION: Do you support authorization of this project?

ANSWER: Not at this time. See discussion above on S. 2144.

QUESTION: Does the Corps have any existing project authority under which this project might be performed?

ANSWER: No.

QUESTION: What would be the non-federal share of the costs for this project under the provisions of S. 2144?

ANSWER: The Corps has conducted no studies to determine the costs, benefits, cost-sharing nor justification for this project. The plain language of S. 2144 suggest that the non-Federal sponsor is to provide lands, easements and rights of ways and to operate and maintain the facility after construction.

Senator Stafford.

13. QUESTION: Please provide comments on S. 2158, which relates to erosion control measures along the Missouri River.

ANSWER: The Administration has not yet reviewed the proposal, therefore we cannot support the bill at this time. The following comments are offered for information purposes only.

No Corps report has been conducted to determine the feasibility of implementing erosion control measures. However, Section 603 of P.L. 99-662 authorized the Corps to undertake streambank erosion control projects for the majority of the Missouri covered by the draft legislation, provided that the work is economically justified and environmentally acceptable and that local beneficiaries pay 25% of the total costs.

The cost of bank stabilization in the proposed legislation would be treated as an O&M cost and apportioned as joint-use costs among existing project purposes. Exceptional treatment of bank stabilization along the Missouri River could have precedent-setting implications for other rivers and lead to major increases in the O&M budget of the Corps. We feel that, in order not to undermine the intent of the cost sharing provisions of P.L. 99-662, bank stabilization on the Missouri River should be cost shared as a new project in accordance with WRDA 1986. Furthermore, the requirement for economic justification established in Section 603 is valid and should apply to any erosion control measure.

Senator Stafford

14 QUESTION. In his testimony before the Committee, Mr. Albert Grant from the American Society of Civil Engineers seems to suggest that to help to encourage local sponsors to more readily accept innovative structures or solutions to water resources problems, some additional assurances from the federal government may be necessary in the event of an innovative project's failure. Could you please comment on this concept. What authorities does the Corps presently have to repair or replace a project if it fails or does not perform as expected? What type of additional authority would the Corps need to provide such assurance to local project sponsors?

ANSWER. The Corps of Engineers promotes innovative technologies in the design and construction of water resource projects, consistent with sound state-of-the-art engineering. Innovative structures or solutions are selected for implementation only after a determination is made that these selections will serve the project as reliably as more traditional structures or solutions would. In making such determinations, the most cost effective selections are made, considering life cycle and deferred risk costs as well as first costs. Local sponsors are fully apprised of maintenance and replacement requirements before the project is turned over to them for operation and maintenance. In view of the forgoing, no additional assurances from the Federal Government are necessary in the event of an innovative projects's failure. Existing project authorities are available to correct design or construction deficiencies that interfere significantly with the project's authorized purposes or full usefulness as intended by Congress at the time of initial construction. The general rule is that Federal construction and funding authorities cease once a project is transferred to local interests for operation and maintenance. Thus in most cases additional Congressional authorization is required for any proposed Federal work associated with completed local protection projects. An exception is for work to correct design or construction deficiencies. Project modification related to design deficiencies can be undertaken without further authorization. Additional authorities are not needed.

Senator Stafford
Question 15

15. QUESTION: Please comment on the technical amendments to sections 912 and 913 of P.L. 99-662 which were suggested in the testimony of the representatives of Orange, Riverside, and San Bernadino Counties in California. Would the Army oppose these changes?

ANSWER: The Army objects to the amendment to Section 913 to raise the "Section 215" limit for the Santa Ana project. There is a limit on reimbursements of $10 million annually. To raise the limit for the Santa Ana project would use up the entire limit and none would be available for other projects. We also oppose raising the reimbursement limit because a higher limit would substantially complicate the budget priority process and reduce the Federal government's ability to manage the program.

In addition, it should be clearly understood that the $2.9 million of "compatible" work by Orange County referred to by the local sponsors in their testimony does not qualify for a Section 215 agreement as the work was accomplished prior to project authorization. Such credit may be possible under Section 104 (Orange County has applied for such credit under that section), but no part of the existing $3 million limit under Section 215 has yet been consumed. It is assumed that the local sponsors simply desire to have the option to undertake a greater share of the Santa Ana project than would be currently permitted under Section 215.

Section 912 of WRDA 1986 amended Section 221 of P.L. 91-611 to allow the sponsor to acknowledge in the local cooperation agreement (LCA) the sponsor's inability to obligate future legislatures to appropriate funds due to state constitutional or statutory provisions which prohibit the obligation of future appropriations. Section 912 does not allow the sponsor to make its performance pursuant to the LCA subject to the appropriations of funds. This is to ensure that prior to the investment of federal dollars in construction of a project, the non-Federal sponsor is legally obligated to perform its responsibilities as stated in the LCA. Additional amendments to section 221 could undermine or confuse this purpose. We therefore oppose the modification of Section 912 proposed by the local sponsors.

Senator Stafford
Question 16a

16. a. QUESTION: In his testimony before the subcommittee, Mr. J. Stanley Payne, representing the Virginia Port Authority made a number of suggestions. One of those suggestions is that the federal government should pay the cost of armoring the Chesapeake Bay Bridge Tunnel because the construction of a tunnel (as opposed to a bridge) was carried out due to military needs. Please comment on this assertion. Could the Corps, under existing authority, assume the cost of armoring the tunnel if it chose? If the ordinary cost sharing requirements were altered in this case, are there other similar instances around the country which would have to be reconsidered with respect to cost sharing?

ANSWER: Section 201(a) of the Water Resources Development Act of 1986 authorized the Norfolk Harbor and Channels, Virginia, navigation project to be prosecuted by the Secretary of the Army substantially in accordance with the plans and subject to the conditions recommended in the report of the Chief of Engineers dated November 20, 1981, at a total cost of $551,000,000, with an estimated first Federal cost $256,000,000 and an estimated first non-Federal cost of $295,000,000. The plans clearly provide for non-Federal responsibility for armoring the tunnel, notwithstanding any previous reasons for construction of the tunnel as opposed to a longer bridge span.

Moreover, Section 101 of P.L. 99-662, which establishes new cost sharing for harbor projects, provides that the non-Federal interests shall provide the lands, easements, rights-of-way, relocations, and dredged material disposal areas necessary for the project.

Army is not aware of any authority which would authorize the Corps to assume as a Federal responsibility the cost of armoring the tunnel.

The possibility exists that if the cost of armoring of the tunnel at Norfolk was made a Federal responsibility, the Port of Oakland, CA, might ask for similar legislation for relocation of the BART tunnel to allow access for Navy vessels.

Senator Stafford

16.b. QUESTION: In addition, Mr. Payne (Virginia Port Authority) also made certain claims regarding the disposition of the Craney Island Dredge Area. Please comment.

ANSWER: Mr. Payne asserted that the Craney Island property which the Commonwealth of Virginia conveyed to the United States is subject to a right of reverter. This assertion appears to be without merit.

The Virginia legislation which authorized the conveyance, Chapter 266, Act of Assembly of 1946, as amended by Chapter 472, Act of Assembly of 1948, did not contain a specific reverter clause. The 1946 Act (1) did make the conveyance subject to certain jurisdictional limitations and (2) allowed the Governor, in his discretion, to include such reversions of title and ownership as he deemed proper. The deed, dated 19 June 1948, contained the jurisdictional limitations by appropriate reference to Sections 18, 19, 19(a), and 19(b) of the Code of Virginia, as stated in the authorizing legislation. It did not contain any specific provisions for reversion of title and ownership. Thus, the Governor did not exercise the discretion specifically granted him to include a title reverter clause in the deed.

Because no specific reverter clauses were included, if any title reverter provisions exist, they would have to have been incorporated by reference to the Virginia Code sections contained in the authorizing legislation and deed. Prior to initiation of construction, the question of the inclusion in the deed, by reference, to any of the reverter provisions contained in sections 18, 19, 19(a), and 19(b) was addressed in an opinion from the Attorney General of Virginia dated August 28, 1953. His opinion was that the only reverter provision applicable to this conveyance was the one in section 19 which provided that title would revert to the Commonwealth if the United States failed to recognize the reservations of power and jurisdictional limitations, such as the right to serve criminal and civil process. Since the United States has never denied the validity of those reservations, it is not applicable.

Senator Stafford

16.c. QUESTION: Please comment on Mr. Payne's (Virginia Port Authority) suggestion that Corps standards for the implementation of Section 933 of P.L. 99-662 are so strict that dredged material that is suitable for placement on beaches is frequently wasted.

ANSWER: Corps criteria for Section 933 proposals, as established in EC 1165-2-142, 15 Dec 87, are: (1) Placement of the material on a beach and Federal participation in the cost must be requested by the State in which the beach lies; (2) The added cost of such disposal must be justified by the benefits associated with protection of the beach; (3) Storm damage reduction benefits must exceed 50% of the total benefits, unless the work is economically justified by storm damage reductions alone; (4) The beach must be open to the public; (5) Placement of the material on the beach must be environmentally acceptable; (6) local interests must pay 50 percent of the added cost of disposal above the alternative least costly method of disposal; and (7) local interests must provide (without cost sharing) any necessary additional lands, easements, rights-of-way, and relocations.

Corps standards for Section 933 proposals either derive directly from the Section 933 legislation or are common with the established standards for Corps involvement in any other kind of shore protection project (e.g. economic justification, open to the public, environmental acceptability, etc.). We therefore do not consider that the Corps criteria are unnecessarily stringent.

Senator Stafford

17A QUESTION: Please comment on the following suggestion by the American Association of Port Authorities: Section 204 of P.L. 99-662 should apply to section 107 projects.

ANSWER: Section 204(e) (reimbursement) should not be used for 107 projects for two reasons. First, for navigation projects where there is a clear Federal interest, there does not appear to be any advantage to the local sponsor for invoking 204(e). In order for a project to qualify for reimbursement, the Secretary must make specific findings with regard to project economics and environmental impacts, and approve the construction design. By the time such findings could be made, the Corps itself should be ready to undertake the work. This saves the local sponsor the trouble of coming up with the full cost of construction (reimbursement under 204(e) cannot take place until the project is complete) and removes any risks that the local sponsor will not be reimbursed (reimbursement is dependent on future appropriations).

Second, we feel that by restricting 204(e) to projects specifically authorized by Congress, we are giving Congress the proper level of notification and control over the program. Modifying Sections 203 and 204 so that they would apply to the continuing authority program could reduce the extent of Congressional oversight over the Corps navigation program, and lead to increased pressure to fund small navigation projects that have marginal national economic value or are composed primarily of recreation benefits. The only reasonable instance where some consideration might be given to making Section 107 projects eligible for implementation under Section 204 might be in those cases where the sponsor owns a dredge and desires to use it in the interest of reducing costs to the Federal Government and non-Federal partner. On the other hand, we would expect the dredging industry to oppose the Corps support of such a proposal.

Senator Stafford
Question 17b

17.b. QUESTION: Please comment on the following suggestions by the American Association of Port Authorities: The Corps should be exempted from the Antideficiency Act. Also please comment on the need for this change, other alternatives, and what has been done to date to help eliminate the problem which this would address. Are any other agencies exempted from the Antideficiency Act?

ANSWER: We do not support legislation to exempt the Corps from the Antideficiency Act because the Corps already has the authority and flexibility to schedule obligations toward construction of the project in a method that will accommodate the sponsor's financial situation as close as possible. This can be handled in the specifications for the construction itself and by working closely with the office administering the contract.

EC 1165-2-144, dated 1 June 1987, "Policy Guidance for New Start Construction Projects" addresses this in several sections. Paragraphs 5c, 6e, 7h, and 7n of the referenced EC address acceptable procedures for handling required non-Federal funds for construction of projects authorized under P.L. 99-662. Various alternatives are available. Irrevocable escrow accounts are acceptable vehicles for the sponsor to use in providing their funds for construction. The EC also allows considerable flexibility in developing a construction schedule and a funds obligation sequence to meet the needs of the sponsor's financing plan.

Other adjustments have also been made. For instance, obligations are usually made annually in many dredging contracts due to ease of administration. Monthly obligations are possible although they may create some additional work in administering the contract (as much as 12 times as many forms and checkpoints as with annual obligation-in-full at the outset of construction type administration) but they do not violate the Anti-Deficiency Act. Several Districts are planning on such a vehicle whereby the dredging will take place in one fiscal year but the sponsor's escrow account will be drawn in a monthly fashion to meet with obligations following the pattern.

We are not aware of any other agencies which are exempted from the Antideficiency Act. This is a matter which is currently undergoing review within the Executive Branch. We recommend against enactment of this proposal until completion of this review.

Questions from Senator Stafford

Senator Stafford

#17C Question: Please comment on the following suggestions by the American Association of Port Authorities: ....

The Corps should more strictly enforce section 10 permit conditions. Do you agree that local project sponsors are, in effect, given the duty of enforcing section 10 permit conditions for the relocation of utility appurtenances in projects of less than 45 feet in depth?

#17 Answer: Project sponsors have the primary responsibility for all necessary relocations under Section 101(a)(4), PL 99-662, including those structures existing under a section 10 permit. The Corps does have the legal authority to order section 10 permittees to remove or alter structures in the interest of navigation but, as a matter of policy, would apply this authority only as a last resort. This policy position is based on both fairness to the permittees who have followed the prescribed terms and conditions of their permits and the premise that project beneficiaries should bear project costs.

Senator Stafford
Question 17d

17.d. QUESTION: Please comment on the following suggestions by the American Association of Port Authorities: Environmental approvals for the Federal and non-Federal portions of port and harbor improvements should be consolidated. Is there sufficient reason to consider this change? Are there any "mechanical" or procedural problems with this concept? Would the protection of the environment in any way be compromised by such a consolidation?

ANSWER: We feel that such legislation is unnecessary. Existing guidance already accomplishes the objective of the proposal. The Corps has an Engineering Regulation (ER 1105-2-20) and Permit Regulations (33 CFR 322.5c) which address the issue of concurrent consideration of permit requirements associated with a navigation project and formulation of the project itself. The ER requires that the formulation of navigation projects shall include consideration of certain activities to be conducted by project beneficiaries which are subject to the DA regulatory program and which are necessary for the full realization of benefits. The ER specifies that after those activities to be conducted by project beneficiaries that necessitate a DA permit are identified, those activities should be addressed in the environmental documentation of the project and that the more detailed analysis for permitting purposes will proceed concurrently with planning, engineering and design. The ER also directs that DA permit activities shall be addressed in conjunction with public meetings or workshops held during the project planning process. Permit applicants are, however, still required to obtain state and local approvals, such as Coastal Zone Management determinations and 401 certifications.

While no procedural problems would occur, per se, consolidation would not eliminate as much local effort as AAPA probably envisions. State and local permits would still be the applicant's responsibility. Furthermore, consolidation would not preclude requirements for information from the applicant/sponsor that might be necessary for adequate review. In addition, the scope of addressing the issue within existing authority (i.e. under existing guidance) would be limited to near-term, reasonably predictable non-Federal activities. Activities for which plans are not yet available should not be included in a consolidated approval process (i.e. the level of detail for non-Federal activities should be comparable to that of the Federal project under consideration). Army would oppose legislation to broaden the scope of the consolidated process beyond that point.

Consolidated procedures will not jeopardize the normal review requirements necessary to comply with law, therefore, consolidation should not compromise protection of the environment.

Senator Stafford

17E QUESTION: Regulatory guidance for Sections 203 and 204 of P.L. 99-662 is long overdue and should be issued quickly-- When does the Corps anticipate that these guidelines will be issued? What has caused the delay?

ANSWER: Guidance on Section 204(e), Reimbursement is currently in the final review stage and should be available to the public in May. Guidance on Section 203 and the other subsections of Section 204 will be available in July. In the meantime, we have been answering inquiries about either Section as they have been received, and we are not waiting for the formal guidance before addressing the questions raised by individual local sponsors. We would encourage any port or local authority who might be interested to contact us and let us know of their interest, either in writing, or through meetings with Corps personnel.

These sections have important implications for the Corps program. If we do not apply the same standards to projects studied or constructed under 203 and 204, that we apply to our own projects, the result could be the creation of a double standard whereby there may not be enough money for other projects, in which there is a stronger Federal interest. Thus, the Corps budgetary priorities may be distorted by non-Federal decisions. Our goal has been to write guidance which is thorough in addressing all of the relevant issues and consistent with our policies for Federally constructed harbor projects. The guidance has been subjected to great scrutiny, thereby creating the delays that have occurred.

Senator Stafford

17. f. QUESTION: The Corps should reassess the role of the Division in the review of local cost sharing agreements--On thje average, how much time is added on to the processing of LCA's by Division review? Why is Division review necessary? If this is a problem, what are some alternatives that could allay the concerns of the local project sponsors and or decrease the LCA processing time?

ANSWER: As regional centers of information Divisions are tasked with the responsibility to review the technical aspects of District LCA packages and to ensure consistency among its Districts. The Division Office is the primary reviewer of engineering, technical adequacy of new start construction projects. Division offices are responsible for approval of all technical design memorandums, approval of NEPA documents and the economic justification for projects.

Of seven regularly authorized projects for which we have specific data, the average Division review of LCA packages took about two weeks. Although the range varies greatly, depending on the type and complexity of project and when it was authorized, this time span is fairly representative of LCA packages throughout the nation.

In order to reduce the overall time it takes to process LCA's we have initiated a concurrent review procedure whereby the Headquarters Review Committee and the Army General Counsel review LCA packages together. Our aim is to reduce the review time to an absolute minimum. Our purpose is to assure and affirm that the project complies with current policy and procedures and that all local sponsors are treated uniformly and equitably.

Senator Stafford

18a Q: Please comment on testimony of the National Wildlife Federation with respect to the need for and possible environmental consequences of the construction of Olmsted Locks and Dams.

A: The Olmsted Locks and Dams project replaces both Locks and Dams 52 and 53 which are located on the Ohio River near its confluence with the Mississippi River. As such Locks and Dams 52 and 53 occupy a strategic position in the inland navigation system. This geographic area represents the 'hub' of America's inland navigation system, thus the importance of an efficient modern locking facility at Locks and Dams 52 and 53 cannot be overstated.

The existing permanent structures for Locks and Dams 52 and 53 are 50 years old and do not meet current design nor operating criteria. The temporary 1,200-foot locks are also near the end of their design lives. Lock and dam operations are slow and hazardous. Due to the age of the facilities, closures for repairs are frequent. The frequent closures and slow rates of operation contribute to excessive delays for traffic moving through the facilities. It is estimated that by 1995 the average delay per tow at Lock 52 will exceed 4 hours and greatly increase thereafter due to inadequate lock capacity. Annual lockage capacity at Locks and Dams 52 and 53 is estimated to be 127 million tons and 144.5 million tons, respectively. These capacities will be reached by the year 2008 and 2040, respectively. From 1983 to 1987, tonn growth was, from 63.7 million tons to 87.3 million tons, a r significant increase.

The principal navigation need is to provide functional and efficient navigation facilities with sufficient capacity to handle present and projected waterborne commerce through the study area. The project is strongly supported by the Inland Waterway User Board, the Governors of both affected states, the navigation industry, and numerous Congressional representatives.

The National Wildlife Federation testified, in regard to possible environmental consequences, that, "Construction could interfere with the nesting and feeding patterns of the Bald Eagles and wintering waterfowl, particularly Canada Geese".

The Corps is aware of the nesting and wintering Bald Eagles and wintering waterfowl. General concepts of the environmental monitoring plan for the Olmsted alternative were provided in the Final EIS. A cooperative agreement with Kentucky Department of Fish and Wildlife Resources was signed in February 1988 to continue joint monitoring to observe the patterns of the Bald Eagles. Data obtained from this effort along with data from observations of Canada geese will be used to assess the potential effects of construction of the Olmsted project. Measures to minimize or mitigate adverse effects will be addressed and coordinated with the US Fish and Wildlife Service, Kentucky Department of Fish and Wildlife Resources and Illinois Department of Conservation should impacts be determined likely to occur.

Senator Stafford
Question 18b

QUESTION 18b. Please comment on testimony of the National Wildlife Federation with respect to the Federation's assessment of the Inland Waterways Trust Fund's adequacy to provide funding for the construction of the Olmsted Lock.

ANSWER: Assessment of alternative assumptions of outlays and receipts for the Inland Waterways Trust Fund was updated in February 1988, for the third Inland Waterways Users Board meeting, held in Washington on 2 March 1988. The base scenario in this assessment included funding of nine projects including eight authorized for construction and authorized for 50 percent funding from the Inland Waterways Trust Fund by the Water Resources Development Act of 1986, P.L. 99-662, plus one potential but unauthorized construction project, the Lower Ohio Locks and Dams 52 and 53 replacement. Outlays from the Trust Fund for this scenario indicate that sufficient funds would be available to fund these projects.

This projection is for macro-planning purposes only. No final determination has been made of the economic justification, environmental acceptability, cost, size, or location of projects. In addition, no Administration or Corps of Engineers commitment to request funds to proceed with the potential construction of the replacement of any locks and dams are implied with this analysis.

Senator Stafford
Question 18c

18. c. QUESTION: Please comment on the testimony of the National Wildlife Federation with respect to the Federation's proposal for generic authority to include recreation and fish and wildlife enhancement as a purpose at all Corps projects.

ANSWER: We believe P.L. 89-72, the Federal Water Recreation Act, provides sufficient authority to operate our existing reservoir projects for the purposes of downstream recreation and fish and wildlife enhancement. However, lacking dedicated storage space, the problem becomes on of developing a water control management plan that meets added project purposes without impacting the existing purposes for which storage space was in fact authorized and for which funds, Federal and/or non-Federal, have been, and are being, expended. Questions of sponsorship and cost-sharing aside, the addition of these purposes to our existing projects must be evaluated on a case-by-case basis to determine: (a) if the proposed modification to the existing water control plan is hydrologically feasible; (b) that the change would not compromise operational integrity, and (c) that there would be no impact on existing authorized purposes. The feasibility of meeting these criteria would, at each project, depend upon both the magnitude and timing of the streamflow required for these added purposes. At many of our reservoirs, water released for the authorized purposes incidentally produces the benefits desired for recreation and fish and wildlife. At other projects, changing the timing of releases may meet the criteria and provide the added benefits. At some, constraints brought on by limited storage space and the operational requirements for the existing project purposes will prohibit achieving the added purposes.

NWF has proposed granting the authority to the District Engineer to add recreation. We oppose this as this would be an infringement on executive authority to delegate levels of responsibility within the Corps of Engineers. Existing Engineering Regulations delegate water control management authority to Division Engineers, not District Engineers. Any provision in the proposed bill affecting our water control management authorities should assign those to the Secretary of the Army.

Senator Stafford

18. d. QUESTION: Please comment on testimony of the National Wildlife Federation with respect to the public release of hydrologic studies if the Corps has paid for all or part of such study.

ANSWER: Dr. Campbell's statement that the Corps "pays" for the hydrologic studies prepared by the non-Federal is not accurate. Section 105(a) of the Water Resources Development Act of 1986 provides that "non-Federal interests [shall] agree, by contract, to contribute 50 percent of such [feasibility] study during the period of such study" and that "[n]ot more than one-half of such non-Federal contribution may be made by the provision of services, materials, supplies, or other in-kind services necessary to prepare the feasibility report." Therefore, the Corps is not paying for the study; rather, non-Federal interests would be providing such study as part of its required cost sharing. In addition, Dr. Campbell mentions that the problem generally involves permit applicants; however, in the context of section 105(a) cost sharing, we are dealing with a potential Federal project, not permit activities.

Notwithstanding the above discussion, Dr. Campbell's statement reflects his concern that if the United States fails to take title, as opposed to a license, to the patents and/or copyright covering the "models" and other related information that the "models" and related information will not be available for release to the public. This title vs. license policy issue has been debated in the patent area for decades. Current thinking, based on experience and reflected in the Federal Acquisition Regulation (FAR) patent rights clauses, is that title should be left with the contractor even in those cases where the U.S. pays for development of the invention. Experience shows that the contractor is best positioned to commercially exploit the invention; therefore exclusivity, i.e. title, is needed to provide the contractor with the necessary incentive to call forth risk capital to commercially exploit the invention. Experience shows that without this exclusivity incentive, patented inventions are not commercially exploited resulting in loss of new industries and the jobs they create. The "models" and related information are probably not protectable by patents but rather by copyrights. However, generally, the discussion of patent rights is equally applicable to copyrights. In any case, the U.S. has never required contractors to transfer title to intellectual property, patents, or copyrights, developed at the contractor's private expense to the U.S. without compensation. If the U.S. is not paying for the study, then it appears inequitable to require the non-Federal interests to transfer title to the U.S. On the other hand, if the U.S. is paying for the study, based on the patent rights experience, it is still advantageous for the U.S. to leave title with the non-Federal interests in accordance with the requirements in the FAR patent rights clauses.

With respect to proprietary data, technical data and computer software, developed at private expense and protected by trade secret law, the FAR's new data provisions provide an excellent balancing of the divergent interests of the parties and can provide guidance for negotiating data rights with the non-Federal interests.

18e Q. Please comment on testimony of the National Wildlife Federation with respect to Non-Federal cost sharing for inland waterway studies.

A. The Water Resources Development Act of 1986 requires no study cost sharing for studies involving inland waterways. Inland waterways and harbors of all types are treated as two distinct categories by the Water Resources Development Act of 1986 because they serve different purposes. Waterways act as a highway or transportation system. It is necessary to plan and develop the waterways as a system, and it would be difficult if not impossible to do so by relying on local initiative and cost sharing. This is further complicated because the WRDA did not define "inland waterways." As a result, the Army must make inland-waterway-vs.-harbor determination on a case-by-case basis, for cost sharing of project construction as well as the feasibility report. Once a definition is determined, there will be a clearer understanding of the implication of inland waterway feasibility cost sharing. Subsequent review may indeed conclude that the Inland Waterways Trust Fund should be used to pay 50% of study costs. This conclusion must be based on a thorough understanding of the impacts on the trust fund and on the inland system, and should include input from the Inland Waterways Users Board.

Senator Stafford

19Q: Please comment on the suggestion of Mrs. Kay Horrell, Councilmember from Redondo Beach, that Section 809 of PL 99-662 be amended to allow the Corps to construct the breakwaters higher than 22 feet. Also, please comment on the 300-foot extension of the southern breakwater and the Corps' interpretation of Section 809.

A: The authorization of improvements at Redondo Beach are contingent upon a favorable report of the Chief of Engineers, i.e., a feasibility report (See Section 809(2)). Feasibility studies recently completed by the District have determined that a 20 foot breakwater crest is the plan which maximizes the net economic benefits (NED plan). In accordance with the authorizing language the Corps will conduct model studies during the Preconstruction Engineering and Design (PED) phase to determine if higher breakwaters are needed and justified. Additional authorization will be required if these PED studies determine that a breakwater elevation greater than 22 feet is justified. Pending the outcome of PED studies, it would be premature to authorize construction of a breakwater greater than 22 feet. A preliminary finding of the draft feasibility is to extend the south breakwater by 300 feet. Pending finalization of the report, it is premature to comment further. Specific provisions in the Water Resources Development Act of 1986 (PL 99-662) take precedence over general provisions. Therefore, the Corps has interpreted Section 809 of the Act pertaining to Redondo Beach and specifying the 50-50 percent cost sharing to apply, even though Section 103 (a) of the Act provides for 35-65 percent cost sharing for projects providing hurricane and storm damage protection. We have [illegible] the generic cost sharing provisions of P.L. 99-662 applying rather than the 50/50 split currently required by law. Also, project O&M should be funded in accordance with P.L. 99-662, i.e., 100 percent non- Federal, unless there are commercial navigation benefits.

Senator Stafford
Question 20

QUESTION 20. Please comment on the amendment suggested by Mayor Jim Conn of Santa Monica, which would allow FEMA's funds to be included as part of the local share of the costs of the Santa Monica breakwater project.

ANSWER: Army policy requires that a Federal grant or assistance funds received by a non-Federal entity may not be used by that entity to pay for a mandatory local or matching share of any other Federal program unless specific criteria apply. Only where specifically authorized by statute, may Federal funds be used by a grantee to pay the matching or non-Federal share of another Federal program. Further, the Administration opposes any effort to provide such statutory authorization. Such an action would be contrary to the principles upon which cost sharing provisions of PL 99-662 were based. Cost sharing under PL 99-662 was specifically designed to require a non-Federal cost contribution to assure that the project has local support and that the scope of the project is proper. Allowing non-Federal sponsors to use other Federal funds to meet its non-Federal responsibility would defeat the purpose behind the cost sharing provisions of PL 99-662. Funding provided by FEMA, if they contribute to the Corps of Engineers project, should be credited as Federal funds.

Senator Stafford

21 Q: Has the Corps been approached by representatives of the Clark County Regional Flood Control District in Nevada with respect to receiving credit towards their share of the costs of the Los Vegas Valley flood control project for recent flood control work which they have performed? What is your position on this crediting?

A: The Clark County Regional Flood Control District has applied for credit under the provisions of Section 104 of PL 99-662. Section 104 of PL 99-662 authorizes and directs the development of guidelines which include criteria for determining whether work carried out by local interests is compatible with a Federal project for flood control. Compatible work which was carried out prior to project authorization, before November 17, 1986 but after November 17, 1981, may be considered part of the project and credited against the non-Federal share of the cost of the project, if the local sponsor applied for consideration of such work not later than March 31, 1987. Local work to be carried out after November 17, 1986 must receive Army approval prior to construction to be eligible for credit, taking into account the economic and environmental feasibility of the project.

The Clark County Regional Flood Control District has already applied for the consideration of credit under the guidelines (33 CFR Part 240) prepared in accordance with Section 104 of PL 99-662 (presumably in association with the Los Vegas Wash project). The Corps review of this application will be completed by May of this year, although we cannot at this time project what the result will be. It would be redundant to prepare additional language regarding credit for work performed by the flood control district in the current authorization bill until the Corps review is complete.

TESTIMONY OF THE
U.S. GREAT LAKES SHIPPING ASSOCIATION

BEFORE THE
WATER RESOURCES, TRANSPORTATION AND INFRASTRUCTURE SUBCOMMITTEE
of the
ENVIRONMENT AND PUBLIC WORKS COMMITTEE

March 16, 1988
WASHINGTON, D.C.

Good morning ladies and gentlemen. My name is Vera Paktor. I am here today in my capacity as Executive Director of the United States Great Lakes Shipping Association. The Association's membership is comprised of vessel owners, operators and agents engaged in the international Great Lakes trades. Headquartered in Chicago, the Association represents members whose vessels call at ports throughout the Great Lakes and whose offices are located in each of the eight Great Lakes states.

We appreciate this opportunity to appear before you this morning. I regret that the Association is not better represented. This is the time of year when the Association's members are overseas, negotiating contracts for the coming shipping season. Unfortunately, most of them were overseas when I recently learned about this hearing and many of them have not yet returned. Most of the directors of the major U.S. Great Lakes ports also are on their annual marketing trip and are unable to be here today.

I'm here to express the Association's position that Seaway tolls payments, currently deposited into the Harbor Maintenance Trust Fund (Fund), should continue to be deposited into the Fund and that the Seaway tolls that are rebated to tolls payers should continue to be paid from the Fund.

The rebating of Seaway tolls, in effect an elimination of tolls on the U.S. portion of the St. Lawrence Seaway, was long sought by Great Lakes maritime industry interests. It was finally accomplished with the enactment of the Water Resources Development Act of 1986 and has resulted in a savings of $9.5 million to shippers and international Great Lakes carriers during the rebate program's first year (1987).

While $9.5 million may seem like a petty sum to many engaged in international trade, it is the largest gift of life that the international Great Lakes maritime industry has received in the 28 years that the Seaway system has been in operation.

As you know, users of the Seaway system were burdened with Seaway tolls and other operating deficiencies from the day the Seaway opened, making it impossible for carriers serving the international Great Lakes to compete with ships serving coastal ports. The additional cost of Seaway tolls, along with high pilotage costs, a nine month-shipping season and the loss of base government cargoes had in recent years begun to cripple the carrier and shore-side industries serving the Great Lakes.

Elimination of Seaway tolls, through the rebate program, has been an important first step on the road to recovery for Great Lakes carriers and the shore-side industries that ship traffic supports. The potential of its loss threatens the viability of an industry that for more than a decade has struggled just to stay in business.

Tonnage of all kinds carried on the Seaway system increased marginally during the 1987 shipping season, from 37,581,000 metric tons in 1986 to 39,968,000 metric tons in 1987. And while tonnage increases are always welcome news, these statistics do not clearly demonstrate the decline of international vessel traffic into and out of the Seaway. During the 1984 shipping season, 900 vessel transits were made by ships carrying international cargoes into and out of the U.S. Great Lakes. By 1987, that figure had fallen to 724 vessel transits. Cargo tonnages carried by these vessels fell from 11,279,430 metric tons in 1984 to 8,610,592 metric tons carried in 1987.

Reducing the cost of shipping by $9.5 million during 1987 sent a clear message to Seaway users here and abroad that the Federal government was doing its part to increase the viability of the Great Lakes/St.Lawrence Seaway system. After years of losses suffered by steamship lines as a result of shifting Government cargo allocations, increases in Seaway tolls and pilotage costs, shippers and carriers were finally encouraged by the increased competitiveness that rebated tolls promised to provide.

If the 1986 Water Resources Development Act is amended to allow tolls revenues to be deposited with the St. Lawrence Seaway Development Corporation rather than the Harbor Maintenance Trust Fund, future rebates will surely cease. Some may tell you that other revenues deposited into the Fund can be used to rebate tolls, but the simple truth is that coastal port interests that contribute to the Fund will not stand by while their monies are used to rebate tolls to users of the Great Lakes/St. Lawrence

Seaway system.

The retention of Seaway tolls rebates is an important test of the Federal government's commitment to the international Great Lakes maritime industry--to the carriers that serve Great Lakes ports and to the shore-side businesses that have developed and exist as a result of carrier activity. A Federal government reversal on tolls rebates shortly after enactment of the Water Resources Development Act would deal a severe blow to Seaway users. It would suggest adoption of an unspoken national transportation policy that is totally unsympathetic to the plight or needs of the international Great Lakes maritime industry. Certainly, it would reverse any of the good will or added cargoes that have resulted from the first year of tolls rebates.

The international Great Lakes maritime industry is fighting to regain its early viability. Vessel operators, public and private terminal operators and other shore-side service providers have shaved their profits year after year just to stay in business. Tolls rebates have allowed them to offer new economic incentives to shippers who now enjoy the benefits of the rebates--and who otherwise would have selected alternate transportation routes. Tolls rebates have allowed carriers and shore-side businesses to compete with coastal port ranges for the first time since the Seaway opened.

We firmly believe that tolls rebates provide an important footing for an otherwise insecure maritime industry, and that tolls should continue to be deposited into the Fund for rebate to Seaway users.

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
Affiliated with AFL-CIO
80 F Street, N.W., Washington, D.C. 20001

STATEMENT BY

KENNETH T. BLAYLOCK
NATIONAL PRESIDENT
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
(AFL-CIO)

BEFORE THE

SUBCOMMITTEE ON
WATER RESOURCES, TRANSPORTATION, AND INFRASTRUCTURE
COMMITTEE ON THE ENVIRONMENT
UNITED STATES SENATE

ON

THE WATER RESOURCES DEVELOPMENT ACT OF 1988

MARCH 16, 1988

My name is Kenneth T. Blaylock, and I am the National President of the American Federation of Government Employees. Our union represents over 700,000 federal and other workers. Today we speak on behalf of the workers of the St. Lawrence Seaway Corporation whom we have represented since its beginning.

We are grateful to the Committee Chairman for holding this hearing and inviting AFGE to testify on the proposal to reinstate toll revenues to the Corporation. In particular, we appreciate the efforts of Chairman Moynihan in visiting the Seaway, talking to the workers, and studying this issue. The Chairman has long been an advocate for the less powerful in this nation. We deeply appreciate the contributions he has made and continues to make on behalf of federal workers.

The mission of the Corporation is to maintain two of the seven locks that link the Great Lakes to the Atlantic Ocean. It is one of the few public corporations of the federal government, and one for which the workers we represent have been proud to work. Their pride owes in large part to the nature of this Corporation and the relationship they have built with Seaway management, as they have cooperated to make these locks the best in the system.

It was under the administration of President Kennedy in 1962 that this cooperative relationship began; faced with costly capital expenditures to refurbish the locks at that time, the workers proposed concessions and work rules aimed to cut costs and keep the system self-sufficient. It was unusual for the federal government to bargain with workers on such issues, but it was a good bargain for both, and it set the course of the Seaway Corporation for years to come.

To these workers, proud of the system, proud of the work they do, and the commitment and sacrifices they have made for it, the independence and integrity of the system is part of the bargain they struck twenty-five years ago; they promised to keep the system working and profitable, and in return they expected the Seaway to treat them fairly and share its profits equitably. It was a partnership--a partnership in which the workers took as much interest in the success of the Corporation as management; one in which the workers have sacrificed pay raises for the last six years, and the next two years to come, to help the system build capital and to help it cope with shortfalls in the wake of the 1982 recession.

So when the Water Resources Development Act of 1986 took sole source of revenue for this corporation away from it, the workers felt betrayed and angry. In our view, we have kept our part of the bargain, but the government has broken its part of the bargain. We have kept the Seaway Corporation sound and solvent, well-run and well-maintained. But the Water Resources Development Act of 1980 disregarded that, it seems, and the revenues that we earn to keep the Seaway going have been redirected.

We do not doubt that the Congress is committed to the Seaway. The Seaway system has been a good public corporation, and we do not understand why it should be broken up.

We understand, of course, that the Congress did not transfer the tolls of the Seaway to the Harbor Fund because of malice to the seaway system or to the workers. We know that it was part of the public policy decision to rebate the cost of the tolls to the ships who fare the locks. To the extent that the rebate encourages shipping into the Great Lakes, it benefits the Seaway system, and so we do not oppose those rebates.

We do wonder, however, whether those rebates are really encouraging more landing in American ports; it seems to our eyes that most of the ships passing through the locks are not flying the American flag and that large numbers are bound for Canadian ports. So we do wonder whether you may want to change the rebate program to specifically encourage American shipping or landings in American ports. We thought that was the intent of Congress. We recommend that you limit the rebates to ships landing in American ports, you could substantially increase the amount of the rebates to those ships going to American ports, offering even a greater incentive to use them.

We believe that the rebate program, when defined to carry out its express purpose, is good public policy and should be supported by the taxpayers. But we do not think that the rebate should be supported by the tolls themselves; we want the tolls returned to the Corporation, and we are asking you to support an amendment to the Water Resources Development Act of 1988 in order to do that.

The Seaway has been a responsible public corporation for over twenty-five years, and we want to keep it that way. It has not been a burden to the taxpayer, and we want to keep it that way.

Senator, this must be the shortest testimony I have delivered to Congress in many years. This is also some of the simplest and most straightforward legislation I've ever seen. Frankly, I can see no good reason to oppose it.

INTERNATIONAL ASSOCIATION
OF GREAT LAKES PORTS

PRESIDENT

J.E. HILL

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June 1, 1988

The Honorable Daniel P. Moynihan
United States Senate
464 Senate Russell Office Bldg.
Washington, D.C. 20510-3202

Dear Senator Moynihan:

As you are well aware, the Water Resources Development Act of 1986, P.L. 99-662, took the first very important step to eliminate tolls on the St. Lawrence Seaway. The imposition of tolls has been a discriminatory burden on Seaway shipping for nearly 30 years.

P.L. 99-662 provided for the rebate of tolls paid by shippers to the U.S. St. Lawrence Seaway Development Corporation (SLSDC). It also called for the toll revenues to be transferred to the Treasury and provided that funds for the operation of the SLSDC would be appropriated by Congress. Over the past year, the SLSDC has advocated a modification to this program, calling for the Seaway to maintain control of the toll revenues instead of transferring those funds to the Treasury. This modification was in no way intended to interfere with the toll rebate program.

The effort to further modify the SLSDC's operations has caused concern in the Great Lakes port industry, and more recently in the Congressional delegation. To eliminate the confusion surrounding this issue, the International Association of Great Lakes Ports (IAGLP) held an open board meeting in Duluth, Minnesota, on May 17, 1988, to thoroughly discuss this issue.

The ports and the SLSDC reviewed the merits of and the political realities confronting the issue of SLSDC retention of tolls. As a result of these discussions, the IAGLP concluded that further modifications to the operation of the SLSDC are not in order. The IAGLP believes that further attempts to make such modifications will only hinder the more pressing need to eliminate all tolls, including those imposed by our Canadian neighbors.

INTERNATIONAL ASSOCIATION OF GREAT LAKES PORTS
June 1, 1988
Page 2

On the other hand, the IAGLP is strongly supportive of the continuing operations of the SLSDC, including its marketing program. Consequently, it was unanimously agreed that the ports and the IAGLP would actively support SLSDC funding requests to maintain, improve and market the Seaway.

On a related matter, we encourage you to contact the Secretaries of State and Transportation to show your support for the effort to negotiate the total elimination of St. Lawrence Seaway tolls with the Canadians as required by P.L. 99-662. Total elimination of Seaway tolls will allow the Great Lakes/St. Lawrence Seaway System to more fully realize its potential and enhance the economic growth of our region.

Thank you for your continued support on issues of importance to the Great Lakes maritime community.

Sincerely,

D Helberg

Davis Helberg
U.S. Chairman, IAGLP

DH/bkm

II

100TH CONGRESS
2D SESSION

S. 2100

To authorize the United States Army Corps of Engineers to construct various projects for improvements to rivers and harbors of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26 (legislative day, FEBRUARY 15), 1988

Mr. MOYNIHAN (for himself, Mr. SYMMS, Mr. BURDICK, and Mr. STAFFORD) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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A BILL

To authorize the United States Army Corps of Engineers to construct various projects for improvements to rivers and harbors of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Water Resources Development Act of 1988".

SECTION 1. Table of Contents:

Title I—Project Authorizations
Title II—General Provisions
Title III—Programs and Studies

SEC. 2. For purposes of this Act, the term "Secretary" means the Secretary of the Army.

TITLE I—PROJECT AUTHORIZATIONS

SEC. 101. The following projects are authorized to be prosecuted by the Secretary substantially in accordance with the plans and subject to the conditions recommended in the respective reports designated in this subsection.

FT. PIERCE HARBOR, FLORIDA

The project for navigation, Ft. Pierce Harbor, Florida: Report of the Chief of Engineers, dated December 14, 1987, at a total cost of $6,742,000, with an estimated first Federal cost of $4,319,000, and an estimated first non-Federal cost of $2,423,000.

NASSAU COUNTY, FLORIDA

The project for beach erosion control, Nassau County (Amelia Island), Florida: Report of the Chief of Engineers, dated May 19, 1986, at a total cost of $5,753,000, with an estimated first Federal cost of $4,619,000, and an estimated first non-Federal cost of $1,134,000.

LOWER OHIO RIVER, ILLINOIS AND KENTUCKY

The project for navigation, Lower Ohio River, Locks and Dams 52 and 53, Illinois and Kentucky: Report of the Chief of Engineers, dated August 20, 1986, at a total cost of $775,000,000, with a first Federal cost of $775,000,000, and with the costs of construction of the project to be paid one half from amounts appropriated from the general fund of the Treasury and one half from amounts appropriated from the Inland Waterways Trust Fund.

HAZARD, KENTUCKY

The project for flood control, Hazard, Kentucky: Report of the Chief of Engineers, dated October 30, 1986, at a total cost of $7,450,000, which an estimated first Federal cost of $5,590,000 and an estimated first non-Federal cost of $1,860,000.

MISSISSIPPI AND LOUISIANA ESTUARINE AREAS, MISSISSIPPI AND LOUISIANA

The project for environmental enhancement, Mississippi and Louisiana Estuarine Areas, Mississippi and Louisiana: Report of the Chief of Engineers, dated May 19, 1986, at a total cost of $59,300,000, with an estimated first Federal cost of $59,300,000.

WOLF AND JORDAN RIVERS, MISSISSIPPI

The project for navigation, Wolf and Jordan Rivers and Bayou Portage, Mississippi: Report of the Chief of Engineers, dated June 10, 1987, at a total cost of $2,290,000, with an estimated first Federal cost of $1,620,000 and an estimated first non-Federal cost of $670,000.

TRUCKEE MEADOWS, NEVADA

The project for flood control, Truckee Meadows, Nevada: Report of the Chief of Engineers, dated July 25, 1986, at a total cost of $78,400,000, with an estimated first Federal cost of $39,200,000 and an estimated first non-Federal cost of $39,200,000.

WEST COLUMBUS, OHIO

The project for flood control, Scioto River, West Columbus, Ohio: Report of the Chief of Engineers, dated February 9, 1988, at a total cost of $31,562,000, with an estimated first Federal cost of $23,671,000, and an estimated first non-Federal cost of $7,891,000.

DELAWARE RIVER, PENNSYLVANIA AND DELAWARE

The project for navigation, Delaware River, Philadelphia to Wilmington, Pennsylvania and Delaware: Report of the Chief of Engineers, dated June 15, 1986, at a total cost of $17,200,000, with an estimated first Federal cost of $9,100,000 and an estimated first non-Federal cost of $8,100,000.

CYPRESS CREEK, TEXAS

The project for flood control, Cypress Creek, Texas: Report of the Chief of Engineers, dated October 12, 1987, at a total project cost of $114,200,000, with an estimated first Federal cost of $84,900,000 and an estimated first non-Federal cost of $29,300,000.

GUADALUPE RIVER, TEXAS

The project for navigation, Guadalupe River to Victoria, Texas: Report of the Chief of Engineers, dated September 1, 1987, at a total cost of $23,900,000, with an estimated first Federal cost of $15,100,000, and an estimated first non-Federal cost of $8,800,000.

SEC. 102. The provisions of section 902 of Public Law 99–662 shall apply to the total costs of projects set forth in this Act, and to the total costs of projects authorized subsequent to this Act.

SEC. 103. (a) The provisions of section 1001(a) and section 1001(c) of Public Law 99–662 shall apply to the projects authorized for construction by this Act, except that the five-year period during which funds must be obligated to prevent deauthorization shall begin on the date of enactment of this Act.

(b) The provisions of section 1001(a) and section 1001(c) of Public Law 99–662 shall also apply to projects authorized subsequent to this Act, except that the five-year period during which funds must be obligated to prevent deauthorization shall begin on the date of authorization of such projects.

SEC. 104. The project for flood control, Redwood River, Marshall, Minnesota, authorized by section 401(a) of the Water Resources Development Act of 1986 (Public Law 99–662; 100 Stat. 4082, 4117), is modified to authorize the Secretary to construct the project substantially in accordance with the General Design Memorandum, dated April 1987, at a total cost of $6,900,000, with an estimated Federal first cost of $5,000,000 and an estimated non-Federal first cost of $1,900,000.

TITLE II—GENERAL PROVISIONS

SEC. 201. (a) Section 101(a) of the Water Resources Development Act of 1986 (Public Law 99–662; 100 Stat. 4082) is amended by deleting all of subsection (2) and inserting in lieu thereof the following:

"(2) ADDITIONAL 10 PERCENT PAYMENT OVER 30 YEARS.– The non-Federal interests for a project to which paragraph (1) applies shall pay an additional 10 percent of the cost of the general navigation features of the project in cash over a period not to exceed 30 years, at an interest rate determined pursuant to section 106. The value of lands, easements, rights-of-way, relocations, and dredged material disposal areas provided under paragraph (3) and the costs of relocations borne by the non-Federal interests under paragraph (4) shall be credited toward the payment required under this paragraph.".

(b) The amendment made by this section is effective as of November 17, 1986.

SEC. 202. Section 1125 of the Water Resources Development Act of 1986 is amended as follows:

(1) by deleting from line 4 of subparagraph (a) the words "United States" and inserting in lieu thereof the words "Bureau of Indian Affairs of the Department of the Interior".

(2) By deleting from subparagraph (b) line 11 the words "north of the half northwest quarter" and inserting in lieu thereof the words "north half of the northwest quarter".

(3) By deleting from subparagraph (b)(2) the description of lands beginning on line 6 and ending on line 13 and inserting in lieu thereof the following:

> "Commencing at the quarter corner common to sections 15 and 16; thence easterly along the quarter line of said section 15 a distance of 1,320.00 feet; thence south 42 degrees 37 minutes 58 seconds west a distance of 903.34 feet to the point of beginning; thence north 42 degrees 37 minutes 58 seconds east a distance of 903.34 feet; thence south 00 degrees 03 minutes 00 seconds east a distance of 1,518.00 feet; thence north 83 degrees 00 minutes 00 seconds west a distance of 668.00 feet; thence north 03 degrees 28 minutes 26 seconds east a distance of 773.78 feet to the point of beginning.".

(4) By deleting subparagraph (c) and inserting in lieu thereof the following:

"(c) The legal description contained in subsections (b) (1) and (2) herein will be subject to correction by survey in order to accomplish the purpose and intent of this Act".

(5) By deleting subparagraph (d) and inserting in lieu thereof the following:

"(d) These lands described in subsection (b) are hereby deemed excess to the needs of the United States for the maintenance and operation of the Garrison Dam and Reservoir Project and are hereby gratuitously declared to be held in trust by the Secretary of the Interior for the use and benefit of the Three Affiliated Tribes of the Fort Berthold Reservation. The United States shall not be responsible for damages to property or injuries to persons which may arise from, or be incident to, the use of said lands".

(6) By inserting a new subparagraph (e), as follows:

"(e) The United States hereby retains a flowage and sloughing easement for the purpose of flood control and related Garrison Dam and Reservoir project purposes over that portion of the lands described in subsection (b) that lie below the elevation of 1,854 feet (mean sea level), to exclude an reserve any residual interest necessary for project operations outside said 1,854 feet msl contour caused by the movement of such contour because of erosion, or the effect of flood impoundments, including, but not limited to, seepage, wave action or sloughing".

SEC. 203. Section 916(a) of the Water Resource Development Act of 1986 (Public Law 99–662; 100 Stat. 4082) is amended as follows: Delete all after "and shall" and insert therein "have the power to recover benefits through any cost-recovery approach that is consistent with State law and satisfies the applicable cost-recovery requirement under subsection (b)".

SEC. 204. Section 402 of the Water Resources Development Act of 1986 (33 U.S.C. 701b–12) is modified by inserting the words "or shoreline protection" after the words "local flood protection".

SEC. 205. (a) The Secretary shall, whenever feasible, seek to promote long- and short-term cost savings, increased efficiency, reliability, and safety, and improved environmental results through the use of innovative technology in all phases of water resources development projects and programs under his jurisdiction. To further this goal, the Congress encourages the Secretary to—

(1) use procurement and contracting procedures that encourage innovative project design, construction, rehabilitation, repair, and operation and maintenance technologies;

(2) frequently review technical and design criteria to remove or modify unnecessary impediments to innovation;

(3) increase timely exchange of technical information with universities, private companies, government agencies, and individuals;

(4) foster design competition; and

(5) encourage greater participation by non-Federal project sponsors in the development and implementation of projects.

(b) Within two years after the date of enactment of this Act, and thereafter at the Secretary's discretion, the Secretary shall provide the Congress with a report on the results of, and recommendations to increase, the development and use of innovative technology in water resources development projects under the Secretary's jurisdiction. Such report shall also contain information regarding innovative technologies which the Secretary has considered and rejected for use in water resources projects under this jurisdiction.

(c) For the purpose of this section, the term "innovative technology" means designs, materials, or methods which the Secretary determines are previously undemonstrated or are too new to be considered standard practice.

SEC. 206. Upon receipt of a request from a non-Federal sponsor of a water resources development project under construction by the Secretary, the Secretary shall provide such sponsor with periodic statements of project expenditures. Such statements shall include an estimate of all Federal and non-Federal funds expended by the Secretary, including overhead expenditures; the purpose for expenditures; and a schedule of anticipated expenditures during the remaining period of construction. Statements shall be provided to the sponsor at intervals of no greater than six months.

SEC. 207. To the extent that the Secretary determines that a project for harbor development, constructed by the Corps of Engineers provides direct, quantifiable benefits to an installation, facility, or vessel of the armed forces of the United States or the Coast Guard, the proportionate share of cost of such project shall be borne by the Federal Government.

SEC. 208. The Comptroller General of the United States General Accounting Office is authorized and directed to conduct a review of the Civil Works Program of the United States Army Corps of Engineers. This management and administration review shall be transmitted to the Congress, together with any recommendations which the Comptroller General may make, no later than one year after the date of enactment of this Act.

TITLE III—PROGRAMS AND STUDIES

SEC. 301. Section 91 of the Water Resources Development Act of 1974 (Public Law 93-251, 88 Stat. 12, 39) is amended by striking out "$30,500,000" and inserting in lieu thereof "$6,000,000 annually".

SEC. 302. The Secretary of the Army is directed to establish a Technical Resource Service for the Red River Basin in Minnesota and North Dakota. There is authorized an appropriation of $500,000 annually for the purpose of providing to the two such States a full range of technical services for the development and implementation of State and local water and related land resources initiatives within the Red River Basin and sub-basins. The Technical Resource Service is to be provided in addition to related services provided under authority of section 206 of the River and Harbor and Flood Control Act of 1960, as amended, and section 22 of the Water Resources Development Act of 1974.

SEC. 303. (a) The Secretary, in cooperation with the Administrator of the Environmental Protection Agency, shall undertake a study of the water quality effects of hydroelectric facilities owned and operated by the Corps of Engineers. Such study shall be transmitted to Congress within two years of the enactment of this section and shall consider and include information for each such Corps of Engineers hydroelectric facility pertaining to: relevant water quality standards including dissolved oxygen; water quality monitoring data; possible options and projected costs of measures required to improve the quality of water released from each such facility where justified; and recommendations with respect to these findings.

(b) Nothing in this section shall convey to any agency of the Federal Government any new authority with respect to the allocation or release of water from Federal reservoirs. Further, nothing in this section is designed or intended to affect any present or future legal actions or proceedings.

II

100TH CONGRESS
2D SESSION

S. 2101

To authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26 (legislative day, FEBRUARY 15), 1988

Mr. STAFFORD (by request) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

---

A BILL

To authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Water Resources Development Act of 1988".

DEFINITION OF SECRETARY

SEC. 2. For purposes of this Act, the term "Secretary" means the Secretary of the Army.

PROJECT AUTHORIZATIONS

SEC. 3. The following projects are authorized to be prosecuted by the Secretary substantially in accordance with the plans and subject to the conditions recommended in the respective reports hereinafter designated:

(1) the project for navigation, Lower Ohio River, Locks and Dams 52 and 53, Illinois and Kentucky: Report of the Chief of Engineers, dated August 20, 1986, at an estimated total cost of $775,000,000, with the costs of construction of the project to be paid one half from amounts appropriated from the general fund of the Treasury and one half from amounts appropriated from the Inland Waterways Trust Fund;

(2) the project for flood control, Hazard, Kentucky: Report of the Chief of Engineers, dated October 30, 1986, at an estimated total cost of $7,450,000, with an estimated first Federal cost of $5,590,000 and an estimated first non-Federal cost of $1,860,000;

(3) the project for navigation, Delaware River, Philadelphia to Wilmington, Pennsylvania and Delaware: Report of the Chief of Engineers, dated June 15, 1986, at an estimated total cost of $16,900,000, with an estimated first Federal cost of $9,000,000 and an estimated first non-Federal cost of $7,900,000; and

(4) the project for flood control, Truckee Meadows, Nevada; Report of the Chief of Engineers, dated

July 25, 1986, at an estimated total cost of $78,400,000, with an estimated first Federal cost of $39,200,000 and an estimated first non-Federal cost of $39,200,000.

PROJECT MODIFICATIONS

SEC. 4. The project for flood control, Redwood River, Marshall, Minnesota, authorized by section 401(a) of the Water Resources Development Act of 1986 (Public Law 99-662; 100 Stat. 4082, 4117), is modified to authorize the Secretary to construct the project substantially in accordance with the General Design Memorandum, dated April 1987, at an estimated total cost of $6,900,000, with an estimated Federal first cost of $5,000,000 and an estimated non-Federal first cost of $1,900,000.

HARBOR UTILITY RELOCATIONS

SEC. 5. (a) Section 101(a)(2) of the Water Resources Development Act of 1986 (Public Law 99-662; 100 Stat. 4082) is amended by deleting the last sentence and inserting in lieu thereof the following sentence: "The value of lands, easements, rights-of-way, relocations, and dredged material disposal areas provided under paragraph (3) and the costs of relocations borne by the non-Federal interests under paragraph (4) shall be credited toward the payment required under this paragraph.".

(b) The amendments made by this section are effective as of November 17, 1986.

RECREATION USER FEES

SEC. 6. (a) Section 4 of the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460l–61), is further amended by—

(1) inserting the words ", water resources development areas administered by the Department of the Army that are used in whole or in part for recreation purposes," after the words "the Department of the Interior" in the first sentence of subsection (a);

(2) deleting the words "The Secretary of the Interior and the Secretary of Agriculture" and inserting in lieu thereof the words "Each administering Secretary" in the first sentence of subsection (a)(4);

(3) deleting the words "The Secretary of the Interior and the Secretary of Agriculture" and inserting in lieu thereof the words "Each administering Secretary" in the first sentence of subsection (a)(5); and

(4) deleting the next to the last sentence of subsection (b).

(b) Section 210 of the Flood Control Act of 1968 (82 Stat. 746; 16 U.S.C. 460d–3) is repealed.

(c) The amendments made by this section shall take effect October 1, 1989.

CONFINED DISPOSAL FACILITIES

SEC. 7. Section 123 of the River and Harbor Act of 1970, as amended, (33 U.S.C. 1293a) is further amended by adding at the end thereof the following new subsections:

"(j) The Secretary of the Army is authorized to continue to deposit dredged materials into a facility constructed under the provisions of this section until the Secretary of the Army determines that such facility is no longer needed for such purpose or that such facility is completely full.

"(k) Authority to construct new facilities pursuant to this section expires on the date of enactment of this Act, except that this subsection shall not apply to any project for which there is an executed agreement, as required by subsection (c), on that date.".

TRANSFERS FOR INTENSIFIED MITIGATION MANAGEMENT

SEC. 8. The Secretary is authorized to transfer funds to another Federal agency or a non-Federal public agency to carry out intensified wildlife management on areas under the jurisdiction of the transferee agency for the purpose of mitigating fish and wildlife impacts attributable to projects under the Secretary's jurisdiction. Such transfers shall be without prejudice to the regular appropriations required by the transferee agency for ongoing management of lands under its jurisdiction.

SUPPORT TO PRIVATE UNITED STATES FIRMS COMPETING IN FOREIGN COUNTRIES

SEC. 9. (a) The Secretary is authorized to undertake a demonstration program for a two-year period, which shall begin within six months after the date of enactment of this Act, to provide technical assistance, on a nonexclusive basis, to any United States firm which is competing for, or has been awarded, a contract for the planning, design, or construction of a project outside the United States, if the United States firm provides, in advance of fiscal obligation by the United States, funds to cover all costs of such assistance. In determining whether to provide such Assistance, the Secretary shall consider the effects on the Department of the Army civil works mission, personnel, and facilities. Prior to the Secretary providing such assistance, a United States firm must—

(1) certify to the Secretary, who shall cocertify, that such assistance is not otherwise reasonably and expeditiously available; and

(2) agree to hold and save the United States free from damages due to the planning, design, construction, operation, or maintenance of the project.

(b) As to an invention made or conceived by a Federal employee while providing assistance pursuant to this section, if the Secretary decides not to retain all rights in such invention, the Secretary may—

(1) grant or agree to grant in advance, to a United States firm, a patent license or assignment, or an option thereto, retaining a nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the United States and such other rights as the Secretary deems appropriate; or

(2) waive, subject to reservation by the United States of a nonexclusive, irrevocable, paid-up license to practice the invention or have the invention practiced throughout the world by or on behalf of the United States, in advance, in whole, or in part, any right which the United States may have to such invention.

(c) Information of a confidential nature, such as proprietary or classified information, provided to a United States firm pursuant to this section shall be protected. Such information may be released by a United States firm only after written approval by the Secretary.

(d) Within six months after the end of the demonstration program authorized by this section, the Secretary shall submit to the Congress a report on the results of this demonstration program.

(e)(1) For purposes of this section, "United States firm" means a corporation, partnership, limited partnership, or sole proprietorship that is incorporated or established under the laws of any of the United States with its principal place of business in the United States; and

(2) For purposes of subsection (a), "United States", when used in a geographical sense, means the several States of the United States and the District of Columbia.

BRUSH CREEK AND TRIBUTARIES, MISSOURI AND KANSAS

SEC 10. (a) The Secretary is authorized to provide services, including the provision of such services by contract, to the non-Federal project sponsor in the design and construction of upstream and downstream non-Federal extensions to the Federal project for flood control, Brush Creek and Tributaries, Missouri and Kansas, authorized by section 401(a) of the Water Resources Development Act of 1986 (Public Law 99-662; 100 Stat. 4082, 4118), if the non-Federal sponsor provides, in advance of fiscal obligation by the United States, funds to cover all costs of such services.

(b) Prior to construction of such extensions, the non-Federal sponsor must obtain all necessary Federal and State permits.

(c) The non-Federal sponsor must agree to hold and save the United States free from damages due to the planning, design, construction, operation, or maintenance of such extensions.

(d) Such extensions remain a non-Federal responsibility and shall not be considered part of the Federal project for any purpose.

OHIO RIVER DIVISION LABORATORY

SEC. 11. The Secretary is authorized to construct a new division laboratory at an estimated cost of $2,000,000, for the United States Army Engineer Divison, Ohio River. Such laboratory shall be constructed on a suitable site, which the Secretary is hereby authorized to acquire for that purpose.

EDUCATION EXPENSES FOR CHILDREN OF CORPS EMPLOYEES IN PUERTO RICO

SEC. 12. The Secretary is authorized to pay tuition expenses of suitable, English-taught primary and secondary education in Puerto Rico for the child or children of any Federal employee when such expenses are incurred after the date of enactment of this Act and while the employee is temporarily residing and employed in Puerto Rico for the construction of the Portuguese and Bucana Rivers, Puerto Rico, project.

SERVICES TO STATES AND LOCAL GOVERNMENTS

SEC. 13. Subsection (d) of section 3036 of title 10, United States Code, is amended—

(1) by designating the first sentence as paragraph (1);

(2) by designating the second sentence as paragraph (2); and

(3) by deleting "United States" and all that follows in such subsection and inserting in lieu thereof the following:

"United States or to a State or political subdivision of a State. The Chief of Engineers may provide any part of those services by contract. Services may be provided to a State, or to a political subdivision of a State, only if—

"(A) the work to be undertaken on behalf of non-Federal interests involves Federal assistance and the head of the department or agency providing Federal assistance for the work does not object to the provision of services by the Chief of Engineers; and

"(B) the services are provided on a reimbursable basis.".

WATER RESOURCES DEVELOPMENT ACT OF 1988

THURSDAY, MARCH 17, 1988

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON WATER RESOURCES,
TRANSPORTATION, AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to recess, at 10:02 a.m., in room 406, Dirksen Senate Office Building, Hon. Quentin N. Burdick (chairman of the Committee on Environment and Public Works) presiding.

Present: Senators Burdick, Warner, Durenberger, and Pressler.

OPENING STATEMENT OF HON. QUENTIN N. BURDICK, U.S. SENATOR FROM THE STATE OF NORTH DAKOTA

Senator BURDICK. The committee will come to order.

The committee will continue to hear testimony today on S. 2100 and S. 2101, both titled the Water Resource Development Act of 1988.

I would remind the witnesses that we have a long list of individuals here to testify today and that if everyone is to be heard, we will have to limit oral testimony to five minutes. We have a little machine here with an assortment of lights; green means keep going, orange, prepare to stop in one minute, and red, stop. We regret having to do it this way, but time is limited.

The written testimony of each witness will be made a part of the record which will remain open for additional comments until March 25.

I am pleased to note that we will begin today with a panel of witnesses who will testify on the Olmsted Lock project, and that the panel will be introduced by my good friend from Kentucky, Senator Ford.

Senator Ford, welcome to the committee, and you can proceed and introduce your witnesses.

STATEMENT OF HON. WENDELL H. FORD, U.S. SENATOR FROM THE COMMONWEALTH OF KENTUCKY

Senator FORD. Thank you very much, Mr. Chairman. Since you're limiting me to five minutes, could I say a few things before you start your clock?

Senator BURDICK. In this case, yes.

Senator **Ford**. Thank you very much. I'm just kidding, as you know.

It's a pleasure for me to be here today and speak about a project that is vital to the future of the inland waterway system, the Locks and Dams 52 and 53 replacement facility that has been proposed for Olmsted, Illinois.

I cannot overemphasize how imperative it is that work on this new structure proceed as rapidly as possible. It is in an area that is the hub of the inland waterway system; the waterborne traffic of 26 States passes through this region. All river traffic on the Ohio River and its tributaries must transit this location on its way to and from the Mississippi. In fact, Mr. Chairman, 40 percent of all traffic on the Ohio River system now utilizes the aging Locks and Dams 52 and 53. On many days boats and barges are backed up and it takes more than 24 hours to lock them through.

The Army Corps of Engineers has estimated that traffic in the Olmsted area will grow nearly 40 percent faster than on the inland navigation system as a whole. Unfortunately, the existing locks are neither structurally sound, nor can they handle the projected levels of traffic. Operation and maintenance of the 100-year-old technology that was used on this 60-year-old facility is dangerous, time-consuming, and not at all cost-effective.

It is estimated that $26.8 million will be needed to keep Locks and Dams 52 and 53 viable over the next decade. Rather than spend money to maintain the status quo, let us move ahead quickly on the new.

I urge the Committee on Environment and Public Works to recommend authorization of the Olmsted replacement facility so that construction can begin without delay.

Mr. Chairman, there is a tremendous amount of longstanding support for the Olmsted project, both inside and outside the Senate. Three years ago, 12 Senators representing the States of Kentucky, West Virginia, Pennsylvania, Ohio, Missouri, Indiana, and Illinois co-signed with me a letter to the Board of Engineers for Rivers and Harbors urging construction on an expedited basis. The Governors of six States are solidly behind the project, and for two years straight the Senate and House Appropriations Committees have allocated $1 million more for continued planning and engineering than was requested in the budget.

I have here, Mr. Chairman, a statement that gives a summary of issues relating to the Olmsted locks and dams, and I would like to submit that to be placed in the record.

Senator **Burdick**. It will be received.

Senator **Ford**. Mr. Chairman, Mr. Barry Palmer, spokesman for the Inland Navigation Association, known as DINAMO, will follow and separately introduce and be the traffic cop for the remaining speakers.

As I look at the witness list I see the names of good friends and some who are not so familiar but no less welcome. First and foremost is George Evans, the noble Secretary of the Kentucky Energy Cabinet; Charley Lehman, Vice President of American Commercial Barge Lines, who has worked with me over the years on issues of importance to the inland waterway community; David Gambrel is here representing coal companies in general and Peabody Holding

Company in particular; the spokesman from our friends at United Mine Workers of America is Marc Gabor; and finally there are two representatives from States which are as dependent upon river traffic as is Kentucky and which need the facility as badly—Gary LaGrange from Franklin, Louisiana, and Don Salsbury from Metropolis, Illinois. We give them a Washington welcome.

It is now my pleasure, Mr. Chairman, to present my distinguished colleague who also has a statement, Senator McConnell from Kentucky.

[The attachments to Senator Ford's statement follow:]

SUMMARY STATEMENT OF ISSUES RELATED TO THE OLMSTED LOCK AND DAM, IL/KY, OHIO RIVER REPLACING LOCKS AND DAM 52 AND 53

Area of Concern: The reach of the Ohio River from the mouth near Cairo, Illinois, to the confluence of the Cumberland River upstream of Paducah, Kentucky, is one of most strategic portions of the inland waterway system. This reach connects the Mississippi River navigation system with the entire Ohio River navigation system, including the Tennessee and Cumberland Rivers. This reach of the Ohio River is approximately 61 miles in length; located within this portion of the Ohio River are Locks and Dams 52 and 53.

Locks and Dams 52 and 53 are the two remaining structures completed in 1929 as part of the original Ohio River low-lift locks and dams cannelization program. Each of these locks and dams include the original 110 x 600 foot lock chamber, a temporary 110 x 1,200 foot lock chamber, a moveable dam for passage of waterborne traffic during periods of moderate to high flow and pool level control, and fixed weirs. These structures allow passage of traffic without lockage approximately 60 percent of the year (on an annual basis) at Locks and Dam 52 and about 90 percent of the year (again on an annual basis) at Locks and Dam 53.

Traffic levels at these locks, in tonnage per year, are among the highest in the inland waterway system. During 1987 tonnage of all commodities passing through the Locks and Dam 52 project totalled 87.3 million tons. To characterize the traffic passing though this project in 1986, Attachments 1-3 provide a listing of various commodities and their respective tonnages.

Replacement of Locks and Dams 52 and 53 is Needed Immediately: This portion of the Ohio River is the "hub" of the inland waterway system. Reliable navigation through this reach is a paramount concern for the nation and the Ohio Valley. Primary navigation-related problems have been identified for Locks and Dams 52 and 53.

First, projected increases in waterway traffic demands and the limited capacities of the existing locks already are creating long delays for towboats transitting this portion of the Ohio River. Estimates of growth in traffic tonnage for Locks and Dam 52 by the Corps of Engineers have been fairly accurate. The Louisville District had anticipated tonnages through this project in 1980, 1985, and 1987 of 68.4, 78.2, and 82.4 million tons of commodities, respectively. Actual tons shipped through this project compare with 65.4, 79.1, and 87.3 million tons for the respective years.

During periods when lockage is required at Locks and Dam 52, individual tows average almost 6 hours of delay; occasionally tows have experienced delays of 20 to 30 hours or more. Based on Corps of Engineers data to monitor lockage times, tows passing through the Locks and Dam 52 facility in 1987 were delayed a cumulative total of almost 28,000 hours. As traffic levels continue to increase in this portion of the Ohio River, this constraint will only become worse. The Corps of Engineers is forecasting average delays of 20 hours by the year 2000.

Secondly, other major problems at Locks and Dams 52 and 53 include project deterioration, structural stability, and operational safety. During periods of low river, a moveable dam is raised by men on a wicket boat. Wickets are 10 feet wide sections, and 400 are required at Dam 52. The metal brackets supporting the wickets in the dam floor are corroding. The significant concrete portions of the project were built without reinforcing steel, relying on mass for stability. The beartrap at Dam 53 is showing large cracks in the wall, requiring extensive maintenance procedures to stabilize its condition. In addition, the substructure of the locks and dams, consisting of wooden piles driven into the riverbed, are overstressed, exceeding current design engineering standards by 50% to 100% during normal operating conditions. In addition to normal loads, Locks and Dams 52 and 53, located near the New Madrid Fault Line, the site of a minor tremor in 1987, are highly susceptible to earthquake induced damage.

The national economic importance of reliable navigation facilities at this portion of the river system dictates construction of a new lock and dam facility to replace Locks and Dams 52 and 53:

In 1986, for example, 85,668,915 million tons of commerce transitted Locks 52. These commodities had a value in excess of $8 billion. Of the tonnage transitting Locks 52, 41.3 million tons, or 48%, was coal. About one-third of this tonnage terminated in Louisiana and Florida. The second largest commodity volume transitting Locks 52 in 1986 was grain at 10,036,510 tons. There are generally two patterns for grain movements integral to Locks 52 as they relate to the Ohio River system. First, Indiana, Kentucky, Ohio, and Illinois exports principally corn, soybeans, and wheat to the Ports of Louisiana. Secondly, large movements of grain are imported from the Upper Mississippi River via the Ohio River system to northern Alabama and Tennessee. The third largest volume of commodities moving through Locks 52 in 1986 was chemical products at 9,990,014 tons. Of this amount, nearly 7.8 million tons originated in Louisiana and Texas, while 7.4 million tons terminated in Ohio, Kentucky, Indiana, and West Virginia.

Status of Pre-authorization Activities: The Louisville District, U S Army Corps of Engineers, has reviewed a number of alternatives to address these navigation problems and recommended a new locks and dam facility to replace Locks and Dams 52 and 53. The location best suited for this structure is approximately 1.8 miles downstream from the present location of Locks and Dam 53 near the community of Olmsted, Illinois. This site is about 44 miles below Paducah, Kentucky, and about 27 miles above the confluence of the Ohio River with the Mississippi River. Draft and Final Environmental Impact Statements were also completed and accompanied the feasibility reports during the review stages.

This new facility would consist of twin 110 x 1,200 foot lock chambers and a dam that would have submersible gates to allow tow passage without lockage during higher flow conditions. Lockage would not be required about 58 percent of the time on an annual basis. This recommended plan has been reviewed at various levels within the Federal government. The project was reviewed by the Board of Engineers for Rivers and harbors and forwarded to the Office of the Chief of Engineers on December 23, 1985. The Chief of Engineers completed review of the recommended plan and sent the project report to the Acting Assistant Secretary of the Army (Civil Works) on August 20, 1986. The Acting Assistant Secretary of the Army (Civil Works) concurred with the recommended plan and forwarded the project report to the Congress on October 26, 1987. The project is included in S. 2100, introduced by Senator Moynihan, Chairman of the Senate Environment and Public Works Subcommittee on Water Resources, transportation and infrastructure, and others on February 26, 1988. The Administration supports the Olmsted Locks and Dam project, as noted in another bill, S 2101, introduced by Senator Stafford by request of the Administration, also on February 26, 1988.

The recommended plan is presently estimated to cost $775,000,000, based on 1987 costs, and requires a construction time of about 8 years. The labor costs are estimated to be about 36% of total project costs, or $280 million, pumped into the local economy directly over the construction life of the project.

Financing The Olmsted Project: The Water Resources Development Act of 1986 increased from 10 cents per gallon to 20 cents per gallon by 1995 the tax on diesel fuel consumed by towboats operating on America's inland navigation system. These taxes currently are gathering in the Inland Waterways Trust Fund and represent the private sector contribution in financing a lock and dam modernization project. In addition, the Water Resources Development Act of 1986 enacted new cost-sharing provisions, whereby 50 percent of the cost of a lock and dam modernization project is financed from the Inland Waterways Trust Fund, and 50 percent of the cost is financed from general treasury monies. These cost-sharing provisions are applicable to the seven authorized lock and dam modernization projects in the Water Resources Development act of 1986. DINAMO and waterways-related interests agreed to accept a gradual increase in user charges and the aforementioned cost sharing provisions in the hope and trust for an orderly inland navigation modernization program in the nation. We support the same 50 percent private sector cost-sharing provisions for the Olmsted Lock and Dam project as adopted by the Water Resources Development Act of 1986.

ATTACHMENT 1

LOCKS AND DAM 52

ALL TRAFFIC/ALL COMMODITIES-1986 TONNAGE

STATE	IMPORT TO	EXPORT FROM
PA	2,282,913	1,907,049
WV	2,303,712	6,787,905
OH	5,865,621	5,096,333
IN	6,492,597	8,314,361
IL	5,968,887	12,379,306
KY	8,970,012	26,911,185
TN	6,103,548	1,609,610
MO	1,386,066	1,536,982
TX	1,139,565	4,106,338
LA	27,698,380	13,219,411
MS	3,067,987	885,083
AL	5,435,545	977,433
AR	913,284	24,531
FL	4,531,303	11,298
OTHER STATES	3,509,495	902,090
TOTAL	85,668,915	85,668,915

ATTACHMENT 2

LOCKS AND DAM 52

1986 TONNAGE AND VALUE BY COMMODITY

COMMODITY	TONNAGE	VALUE WATERBORNE COMMERCE*
COAL	41,345,792	1,406
GRAIN	10,036,510	913
CHEMICALS	9,990,014	2,038
AGGREGATES	6,591,658	63
IRON, STEEL	5,061,571	2,035
PETROLEUM	4,911,439	619
ORES	2,876,707	239
CRUDE PETROLEUM	54,378	5
OTHER COMMODITIES	4,800,936	710
TOTAL	85,668,915	8,028

* in $millions, based on October 1986 price levels on weighted distribution of Ohio River Basin Waterborne Commerce for each commodity group.

ATTACHMENT 3(A)

LOCKS AND DAM 52

TONNAGE BY COMMODITY-1986

COAL

	EXPORT FROM	IMPORT TO
KY	17,435,546	2,723,484
WV	6,141,622	1,625
IL	8,656,952	4,761,831
IN	5,296,781	4,078,380
OH	2,293,244	1,439
PA	1,130,846	
MO	1,439	959,806
LA	54,052	14,929,846
MS		1,936,984
FL		4,475,614
AL	10,249	2,797,358
TN	323,630	1,447,695
OTHER STATES	1,431	3,231,730
TOTAL	41,345,792	41,345,792

ATTACHMENT 3(B)

LOCKS AND DAM 52

TONNAGE BY COMMODITY-1986

GRAIN

	EXPORT FROM	IMPORT TO
IN	2,601,220	140,817
KY	1,881,384	61,441
OH	1,830,890	23,884
IL	1,341,373	30,614
TN	452,264	1,148,475
AL	298,989	1,512,376
MO	201,623	
LA	151,654	6,929,007
OTHER STATES	1,277,113	189,896
TOTAL	10,036,510	10,036,510

ATTACHMENT 3(C)

LOCKS AND DAM 52

TONNAGE BY COMMODITY-1986

CHEMICALS

	EXPORT FROM	IMPORT TO
LA	4,598,888	174,023
TX	3,230,570	292,134
IL	499,756	198,193
MO	226,683	147,766
AL	207,325	530,542
WV	186,464	991,913
PA	164,546	555,986
OH	160,690	2,677,431
KY	150,911	2,534,770
IN	68,674	1,202,640
TN	63,278	628,483
OTHER STATES	882,229	56,133
TOTAL	9,990,014	9,990,014

Senator BURDICK. Senator McConnell.

STATEMENT OF HON. MITCH McCONNELL, U.S. SENATOR FROM THE COMMONWEALTH OF KENTUCKY

Senator MCCONNELL. Thank you very much, Senator Ford.

Bearing in mind your admonition, Mr. Chairman, and also the fact that I am supposed to be testifying before another committee at the same time, I'll not repeat what my senior colleague has told you.

Suffice it to say that this is an outstanding project. It is important to our State and to the surrounding areas. Almost everyone involved in it has signed off on it and believes that it is an appropriate project to commence.

So with that overview, and with my good wishes to all those here who are going to fill in the details, I'll simply ask that my statement be made a part of the record.

Senator BURDICK. Without objection.

[Senator McConnell's statement follows:]

STATEMENT OF
SENATOR MITCH MCCONNELL
BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES
SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE
MARCH 17, 1988

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, I APPRECIATE THIS OPPORTUNITY TO SPEAK ABOUT THE OLMSTEAD LOCK AND DAM PROJECT - WHICH HAS BEEN SLATED FOR AUTHORIZATION IN S. 2100, THE WATER RESOURCES DEVELOPMENT ACT OF 1988. I COMMEND THE SUBCOMMITTEE FOR ITS TIMELY INTRODUCTION OF THE BILL. RECOGNIZING THE CONSIDERABLE DIFFICULTY IN ACHIEVING PASSAGE OF THE LAST AUTHORIZATION BILL, I FEARED THAT IT WOULD BE A LONG TIME BEFORE ANOTHER ONE EMERGED FROM THE SENATE.

YOU WILL HEAR CONSIDERABLE TESTIMONY ON THE OLMSTEAD PROJECT TODAY OUTLINING THE URGENT NEED FOR REPLACEMENT OF LOCKS AND DAMS 52 AND 53 ON THE OHIO RIVER. WHILE THIS SENATOR DOES NOT WISH TO BURDEN THE RECORD WITH DUPLICATIVE INFORMATION, I BELIEVE IT IS

IMPORTANT TO BRIEFLY OUTLINE THE OLMSTEAD PROJECT'S IMPORTANCE TO COMMERCE, IN GENERAL, AND TO KENTUCKY, SPECIFICALLY.

IRONICALLY, AS TRAFFIC IS PROJECTED TO INCREASE THROUGH THESE STRUCTURES AT THEIR STRATEGIC LOCATION ON THE OHIO, THEIR DETERIORATING CONDITION COULD JEOPARDIZE THE EFFICIENT FLOW OF BULK COMMODITIES VITAL TO THE ECONOMIES ALONG THE RIVER. AS I UNDERSTAND IT, THE CORPS OF ENGINEERS FORECASTS AVERAGE DELAYS OF 20 HOURS BY THE YEAR 2000 IF THE SITUATION IS LEFT UNTENDED.

APPROXIMATELY 350,000 JOBS HAVE BEEN ASSOCIATED, DIRECTLY AND INDIRECTLY, WITH WATERBORNE COMMERCE WHICH EXCEEDED 223 MILLION TONS ALONG THE OHIO IN 1986. NOTING THAT THE LARGEST TONNAGE WAS IN RURAL COMMODITIES OF COAL AND GRAIN, IT IS APPARENT TO ME THAT AN EFFICIENT, MODERN WATERWAY SYSTEM COULD HAVE A DIRECT BEARING ON THE REVITALIZATION OF RURAL AMERICA AND OUR ENERGY SECURITY.

IN 1986, KENTUCKY EXPORTED ABOUT 27 MILLION TONS OF COMMODITIES THROUGH LOCKS AND DAM 52; TWICE AS MUCH AS ANY OTHER EXPORTER. AS THE NUMBER ONE COAL PRODUCER, IT IS NOT SURPRISING THAT MORE THAN HALF THAT TONNAGE WAS IN COAL.

AS I UNDERSTAND IT, ONE IN EVERY FIVE TONS OF COAL PRODUCED IS CARRIED ON INLAND WATERWAYS FOR PART OF THE TRIP FROM MINES TO

ELECTRIC ULITIES OR INDUSTRIAL PLANTS. HISTORICALLY, THE INLAND WATERWAY SYSTEM HAS BEEN AN IMPORTANT TRANSPORTATION ALTERNATIVE FOR COAL AND IS OFTEN THE LEAST EXPENSIVE AND SAFEST MODE OF TRANSPORT. BELIEVING THAT INCREASED COAL USE IS CRITICAL TO OUR PRESENT AND FUTURE ENERGY SECURITY NEEDS, WE SHOULD DO ALL THAT WE CAN TO ENCOURAGE EFFICIENT TRANSPORT OF THIS VITAL COMMODITY. NOT ONLY WOULD COAL OPERATORS, MINERS AND UTILITIES ACCRUE THE ECONOMIC BENEFITS OF LESS EXPENSIVE COAL SHIPMENTS, THE RESIDENTIAL AND INDUSTRIAL RATEPAYERS WOULD BENEFIT, AS WELL. YET, THE BARGE INDUSTRY'S ABILITY TO RETAIN, IF NOT INCREASE, ITS COAL HAULAGE TRAFFIC RESTS LARGELY ON CONGRESS' ABILITY TO PROVIDE FOR THE CONTINUED MODERNIZATION OF THE INLAND WATERWAY SYSTEM.

AS WITH COAL, WESTERN KENTUCKY IS A LARGE GRAIN PRODUCER AND IS ONE OF THE LARGEST GRAIN EXPORTERS THROUGH LOCKS AND DAM 52. NOTWITHSTANDING THIS FACT, NO ONE IN THIS ROOM WOULD DISPUTE THE FACT THAT THE AGRICULTURAL ECONOMY IS STRUGGLING. FARMERS' ABILITY TO MAXIMIZE COST SAVINGS FROM EFFICIENT WATER TRANSPORT WILL HAVE A DIRECT POSITIVE IMPACT ON EFFORTS TO MARKET THEIR GRAIN MORE EFFECTIVELY.

While we made great progress in last Congress' Omnibus bill, Ulmstead's strategic position on the Ohio River and its deteriorating condition indicates that we should move quickly on a new, albeit smaller, authorization bill. I support the Subcommittee's efforts in this direction, and thank you for the opportunity to have testified before you this morning.

Senator **Burdick.** Mr. Evans?

STATEMENT OF BARRY PALMER, EXECUTIVE DIRECTOR, INLAND NAVIGATION ASSOCIATION (DINAMO)

Mr. **Palmer.** I am Barry Palmer, sir, the Executive Director of DINAMO, which is an acronym for the Association for Development of Inland Navigation in America's Ohio Valley.

We have a number of panelists here and we want to keep within the time limit that you have constructed.

I only want to say that DINAMO is a coalition of State government leaders, business and industry leaders, and labor leaders within the Ohio Valley. We have only one purpose, and that is to help expedite the modernization of the lock and dam infrastructure which is old, deteriorating, and obsolete.

I would like to move now to our first panelists, the distinguished Secretary of the Kentucky Energy Cabinet from the Commonwealth of Kentucky, Mr. George Evans.

STATEMENT OF GEORGE EVANS, SECRETARY, KENTUCKY ENERGY CABINET, COMMONWEALTH OF KENTUCKY

Mr. **Evans.** Mr. Chairman, members of the subcommittee, good morning.

I am George Evans, Secretary of the Kentucky Energy Cabinet and Vice Chairman of DINAMO. I would like to thank you, Mr. Chairman, for providing a forum for us and on behalf of this lock and dam project. I want to associate myself with the remarks made in DINAMO's summary statement, of which I believe you have a copy.

Kentucky's State government supports the Olmsted locks and dam project. We support it because the locks and dams that are currently there are deteriorating at a rapid pace, because the navigational facilities will not meet future traffic demands, and because the Ohio River system is the lifeblood of our Commonwealth. We need this project to maintain our economy and the jobs of the people who work in Kentucky.

I have brought some visual aids, Mr. Chairman, in order that you could see where the project is located, what its condition is, and why we need a new lock and dam. Let's look at our map of the area of concern first.

As you can see, Locks and Dams 52 and 53 are located near the confluence of the Ohio and Mississippi Rivers. Commerce along these rivers moves principally in three directions: from Pennsylvania west to the Mississippi River and south to the Gulf; secondly, from Louisiana and Texas up the Mississippi River and into the Ohio River Basin; and thirdly, from Illinois on the upper Mississippi, principally with grain, into the Ohio River and through the Kentucky Lock into northern Alabama and Tennessee.

Locks and Dams 52 and 53 are located at the hub of America's inland navigation system; 85 million tons of commerce moved through this area in 1986. This waterborne commerce has a value of $8 billion.

We have brought several slides with us this morning, Mr. Chairman, to illustrate the current condition of Locks and Dams 52 and 53.

First, located near the confluence of the Ohio and Mississippi Rivers, Locks and Dams 52 and 53 present a unique set of problems. Both have permanent lock chambers 600 feet in length constructed 60 years ago. Each permanent lock is supplemented with temporary lock chambers 1,200 feet in length. Lock 52, for example, was completed in 1969 with a design life of 15 years. Today, 85 million tons of traffic move through this section of the river, the heaviest of any on the Ohio River and growing rapidly.

Other major problems in Locks and Dams 52 and 53 include project deterioration, structural stability, and operational safety. During periods of low river, a moveable dam is raised by men on a wicket boat. Wickets are in 10-feet-wide sections, and 400 are required at Dam 52. The metal brackets supporting the wickets are corroding. The beartrap at Dam 53 which is used to control the water flow at certain times is showing large cracks in the wall. The substructure of the locks and dams, consisting of wooden piles driven into the river bed, are overstressed, exceeding current engineering standards by 50 percent to 100 percent during normal operating conditions.

In addition to normal loads, Locks and Dams 52 and 53, located near the New Madrid fault line, the site of a minor tremor in 1987, are highly susceptible to earthquake damage.

Our final slide presents an aerial view of how the new locks and dam facility will appear.

This situation is of particular concern to us since the economy of Kentucky is heavily dependent upon the transport of goods by water. In Kentucky there are more than 78,000 jobs directly and indirectly associated with waterborne commerce. In 1986, Kentucky exported in excess of 17 million tons of coal through Locks 52, for example. And of the 85.6 million tons of commerce that transited Locks 52, 41.3 million tons—or about 48 percent—was coal. Kentucky is a coal-producing State. Our competitive edge and our future livelihood is tied to the river, so it is critical to Kentucky that these locks and dams be able to meet the demands of the present, as well as the increasing needs of the future.

Therefore, Mr. Chairman, we urge your continuing support in getting this project authorized this year.

Thank you.

Senator **Burdick**. Thank you, Mr. Evans.

Mr. **Palmer**. Mr. Chairman, I would now like to present the Director of Transportation for Peabody Development Company in St. Louis, Missouri, Mr. David H. Gambrel, our next witness.

Senator **Burdick**. Mr. Gambrel?

STATEMENT OF DAVID H. GAMBREL, DIRECTOR OF TRANSPORTATION, PEABODY DEVELOPMENT CO., ST. LOUIS, MO

Mr. **Gambrel**. Good morning, Mr. Chairman and members of the committee. I am David H. Gambrel, Director of Transportation for Peabody Development Company.

Peabody Development Company is part of the Peabody family of companies, of which Peabody Coal Company is also a part. Peabody is the largest producer of coal in the United States with operations in 11 States, from West Virginia to Wyoming, including both Kentucky and Illinois.

I appear here today to voice strong support for full funding of the replacement of Locks and Dams 52 and 53. The existing facilities at that location were completed in 1929 and are now outdated, inefficient, and obsolete. The new replacement facility is a much-needed improvement in the U.S. inland waterway system.

This system provided the means for transporting 14 percent of all the coal shipped by the U.S. coal industry in 1986, which amounted to about 115 million tons of coal. The National Coal Association, which submitted a separate statement in support of the Olmsted project, has recommended that this project be given a high priority as Congress begins the authorization process on new, critical river navigational projects. Peabody concurs in that recommendation.

As I have stated, while 115 million tons of all coal shipped by the U.S. coal industry in 1986 moved on the inland waterway system, 41 million tons of that coal moved past Locks and Dam 52 itself; thus, a full one-third of all the coal which moved on the inland waterway system actually passed through the area where the Olmsted project is to be sited.

One can easily see the importance to the coal industry of a dependable and efficient locking system at such a key location on our navigable river system. Coal shipped through this area is delivered to customers in Florida, Louisiana, Kentucky, Illinois, Indiana, Missouri, Mississippi, Alabama, and Tennessee, as well as several other States.

These locks and dams affect the ability of the coal industry to distribute its product to its many customers in these States. For some coal producers, the inland waterway system provides the only transportation mode available for their products, without which they could not compete.

On an individual company basis, Peabody and its affiliates shipped over 13 million tons of coal on the inland waterway in 1987. That's more than 17 percent of the total production of Peabody, which is about [illegible] million tons. Our Illinois division shipped 4.8 million tons by water. Our Eastern division, which includes western Kentucky, shipped 8.1 million tons by water, and the remainder came out of West Virginia. About 6.5 million tons of all our production went through the area where the Olmsted project is going to be located.

For Peabody, the Ohio River and the access which the Olmsted project will provide to the Mississippi are of vital importance. It represents a critical portal through which coal must be shipped to its customers along the Mississippi River.

Locks and Dams 52 and 53 have provided a reliable and needed service for nearly 60 years. It is now time to upgrade and improve this strategic navigational facility to a size and condition which is consistent with the heavy usage it has consistently received and is expected to receive in the future.

As evidenced by the testimony of this panel, the high volumes of barge traffic which this facility presently handles is unlikely to decrease significantly in the future. Indeed, we're likely to see more tonnage increases. Peabody alone expects to increase tonnage through these locks by 1.2 million tons in 1988, and that tonnage will continue for the next 20 years.

The existing facilities are barely able to handle the traffic they now receive, and waiting times for locking services often exceed six hours.

We are also concerned about the reliability of these facilities because failure of the facilities could result in total interruption of the 6.5 million tons of coal that is going to our utility customers.

We feel that the size of these existing locks is insufficient to accommodate modern tows with jumbo barges. We feel that their condition is such that in terms of maintenance cost their useful life is near an end.

So on behalf of Peabody I would once again ask that this committee approve full funding for the construction of a modern navigational facility at Olmsted as called for in the Water Resources Development Act of 1988.

Thank you.

Senator **Burdick**. Thank you.

Mr. **Palmer**. Our next panelist is Mr. Charles Lehman, Vice President of American Commercial Barge Line. Mr. Lehman is Vice President for Public Affairs.

STATEMENT OF CHARLES F. LEHMAN, VICE PRESIDENT FOR PUBLIC AFFAIRS, AMERICAN COMMERCIAL BARGE LINE

Mr. **Lehman**. Thank you, Barry.

Good morning, Mr. Chairman. I will summarize my remarks but would appreciate if the full statement would be placed in the record.

My company is in the inland waterway transportation service business. We are part of the CSX corporation.

It is entirely appropriate that we are testifying before this Subcommittee on Water Resources, Transportation and Infrastructure because the Olmsted lock meets all of these criteria listed in the title of the subcommittee. Certainly, it is the most important water resources project now being designed. It is a part of the transportation network tying an entire midcontinent of this country together.

Finally, by an definition, it is one of the most significant infrastructure undertakings needed, impacting millions of Americans throughout the Ohio and Mississippi Valleys, as well as the entire Nation.

This project is vitally important to the inland waterway system. We urge its authorization by Congress and its construction in a timely fashion.

The Inland Waterway Users Board, authorized by this committee, has assigned it a Category 1 priority, which is for projects that the Board feels should be accelerated within existing core capabilities or for which the Corps capabilities could be increased. Olmsted lock and dam is the critical structure in an entire navigation reach. If failure occurs at either Locks and Dams 52 and 53, the

Ohio River navigation system would be a series of pools with only local commerce taking place.

Others have testified and will testify about the various commodities moving through present Locks and Dams 52 and 53 and their importance to the economy. It is sufficient for me to say that not only the States that border the Ohio will benefit from the Olmsted project, but also all of those States in the connecting valleys. Presently, more than 3,200 of my company's barges transit the lower Ohio River area annually. Our delays when the moveable wicket dams at Locks and Dams 52 and 53 are up for any length of time are longer than the six hours averaged by the Corps on an annual basis. For instance, in September, 1987, when required to lock at 52, our delays averaged nine hours per tow. In October it increased to eleven hours delay per tow.

Since the lower Ohio is in an area of the greatest tonnage growth on the Ohio system, we expect delay times to increase exponentially as presently occurs on the Mississippi when the lock at Dam 26 is down for repair and the backup starts to build. We believe that if nothing is done, the average waiting time at Locks and Dams 52 and 53 in the year 2000, only 12 years away, will be much greater than the 20-hour delay average estimated by the Corps.

Earlier I mentioned the possibility of failure, and others have mentioned it also. We are concerned that the present structures are constructed within the seismographic area of the New Madrid fault. The last serious eruption occurred in 1811, which laid waste to the city of New Madrid on the Mississippi River; and although seismic instruments were not in existence at the time of the 1811 quake, the best estimates are that its epicenter would have measured about 8.6 on the Richter scale. The present Locks and Dams 52 and 53 could not withstand such a shock nor the lesser shockwaves which would fan out from its center. Most new bridges and large public structures in fault areas are now built to withstand seismic tremor measurements of about 6.5. The new project at Olmsted will be of the latest technology and will be built to this standard.

It has been estimated that there will be about a 40 percent chance of a serious quake of a 6.3 magnitude within the next 12 years. It is almost a sure thing, about 97 percent sure, that a quake measuring 6.3 on the Richter scale will occur within the next 50 years according to the Earthquake Center at Memphis State University.

It is extremely important to commerce in the Ohio Valley that we be prepared for this eventuality and ensure that the Olmsted project is constructed as soon as possible.

Again, I want to say that I appreciate the opportunity to testify on this essential navigation project and would be pleased to answer any questions which you or the staff may have. Thank you, Mr. Chairman.

Mr. **Palmer**. Mr. Chairman, we'd now like to introduce Mr. Gary LaGrange who is Executive Director of the West St. Mary Parish Port, Harbor and Terminal District in Franklin, Louisiana. He represents the State government in Louisiana.

Gary?

STATEMENT OF GARY P. LaGRANGE, EXECUTIVE DIRECTOR, WEST ST. MARY PORT, HARBOR, AND TERMINAL DISTRICT, FRANKLIN, LOUISIANA, REPRESENTING THE STATE OF LOUISIANA

Mr. **LaGrange**. Thank you, Mr. Palmer.

Mr. Chairman, it is a pleasure to be here today. As Mr. Palmer indicated, I'm Gary LaGrange, Chairman of the Louisiana Shallow Draft Ports and Waterways Commission, past Chairman of the Water Resources Congress, and also the Ports Association of Louisiana. Testimony today is on behalf of the State of Louisiana as well as the 44 ports in the State of Louisiana.

One glance at this splendid map up here will depict the reason very vividly as to why Louisiana's interest and support lies with this particular project. New Orleans and the 44 ports tie directly into the project site.

As I said, on behalf of the State of Louisiana we are very appreciative for the opportunity you've granted us to testify on matters related to S. 2100, the Water Resources Development Act of 1988. Specifically, I wish to address my comments to issues of the Olmsted project as indicated previously.

In Louisiana, we know that the 1987 tonnages for Locks and Dams 52 and 53 total roughly 87.3 million tons. Of this particular total, well over 27 million tons of total cargo is destined for the State of Louisiana, over 30 percent of that which transited the locks and dams.

To further illustrate the interest displayed by Louisiana toward the project, we know that in 1986 the total for Locks and Dams 52 and 53 was roughly 41 million tons of coal. The destination for approximately 15 million tons, or 37 percent of that particular commodity, once again was the State of Louisiana where, on arrival, the product was either transloaded onto oceangoing vessels for export or utilized by industry in Louisiana and neighboring Gulf Coast States, the 12 million or so tons alluded to previously by our friends from Peabody Coal.

Grain was yet another commodity shipped and transloaded through Locks and Dams 52 and 53 on a frequent basis in 1986. While over 10 million tons of grain transited the structure, approximately 7 million tons, or 70 percent, wound up in Louisiana's terminals and elevators.

On yet another note but in a different vein, 1986 figures indicated that approximately 10 million tons of chemicals were shipped through Locks and Dams 52 and 53. Of this total amount, 4.5 million tons, or 45 percent of the commodity, was shipped from Louisiana north through the lock and dam for the purpose of servicing businesses, industry, and residential users of the northeastern States and the eastern seaboard.

Needless to say, the aforementioned information should adequately depict the rationale utilized by business, industry, and government in Louisiana with regard to lining up as a number one proponent for this project. Our deep concern in Louisiana emanates from the dire and immediate need to replace Locks and Dams 52 and 53. Several primary navigation-related problems are prevalent at the dams and if not resolved in a prompt and efficient manner, they could result in a tremendous downturn of use of the Mississippi and Ohio River systems, thereby curtailing a great deal of domestic and international economic activity and trade.

Tonnage projections by the United States Army Corps of Engineers through the years have been fairly accurate. Future projections indicate further increases in waterway traffic demands on the system. Existing maritime delays for towboats are already at a level of concern for many of the users of the waterways. Alternative methods of shipment have for some time been the primary point of discussion. In most instances due to the nature of the commodity, inland waterway transportation remains head and shoulders above other modes, even with minimal delays. By the same token, extended delays are quite costly to the users and, ultimately, the consumers.

Without constant vigilance on behalf of the shepherds of the inland waterways and without constant attention by Congress, sooner or later the ultimate blow will have been struck. The competitive edge of bargaining and bartering in America will have been lost. Our loss will no doubt be replaced by some other country's gain due to the fact that we were not wise and prudent enough to maintain and improve our inland waterway system.

Moreover, we will have only ourselves to hold accountable for not having recognized that this God-given inland waterway system provides this tremendous country with the competitive edge of trade, so desperately needed to remain in the forefront as an international leader in the world market.

The aforementioned periods of delay where lockage is required have oftentimes averaged six hours. There have been other times when some delays have exceeded 20 hours. Corps of Engineers statistics indicate that during 1987, the cumulative total of delays for Locks and Dams 52 and 53 were almost 28,000 hours. By the year of 2000 the Corps of Engineers projects average delays of 20 hours. This is absolutely ludicrous, and this type of condition would certainly provide the much-dreaded catalyst or final blow to the very reliable and sophisticated system that we now know.

Once again, on behalf of the State of Louisiana and its port, industry, and waterway users, we are very proud to take this opportunity to support and testify on behalf of the Olmsted project. We recognize that the total estimated cost of the project is a large amount, but we also realize that Locks and Dams 52 and 53 play a very large and key role in the future of inland navigation, trade, and commerce in the heart of America.

I speak on behalf of the State of Louisiana and the maritime community and industries of our State in asking that we join hands in partnership with the provisions of the Water Resources Development Act of 1988 to rebuild Locks and Dams 52 and 53. The future of the inland waterway system of this country today rests in our hands; but moreover, the future prosperity of America rests in the hands of an efficient, usable inland waterway system.

I see my time is up, and I leave you with one slogan that we have down in Louisiana at the Louisiana Coastal Seaway Association. Simply remember, gentlemen, that "prosperity goes where water flows."

Thank you.

Mr. PALMER. Thank you, Gary.

Now, Mr. Marc Gabor, National Legislative Representative of the United Mine Workers of America.

STATEMENT OF MARC GABOR, NATIONAL LEGISLATIVE REPRESENTATIVE, UNITED MINE WORKERS OF AMERICA

Mr. GABOR. Good morning, Mr. Chairman. I appreciate the opportunity to testify this morning on behalf of the quarter million members of the United Mine Workers who work both below ground and above ground. I am also representing our international president, Richard Trumka, who also serves on the Board of Directors of DINAMO and is totally supportive of their efforts.

I might add at this time that it is a pleasure to be on the same side of the table with Peabody Coal and not on the other side, so it's a particular pleasure to be here.

The MWA fully supports the Olmsted project and enthusiastically endorses the efforts of DINAMO to ensure authorization of this project. "If American coal is to be competitive not only in domestic markets but in the world market as well, we must have an inland waterway system that is able to move commerce both efficiently and quickly." Close to 40 percent of the traffic through the Olmsted project is coal, both export coal and domestic coal for utility and industrial uses.

Having been first built in 1929, we urge the committee to approve this project so that coal can compete well into the year 2000.

Thank you very much.

Mr. PALMER. Mr. Salsbury, Vice President and General Manager of Mid-South Towing asked that in the interest of time his comments be put in the record.

I only want to conclude the formal remarks, Mr. Chairman, by saying that you have before you representatives of business and industry, State government, labor—this is the composition of this effort in the Ohio Valley to help to expedite the modernization of the lock and dam infrastructure. We need this project, Mr. Chairman. We thank you very much for your support and for the opportunity to be here. We would be happy to answer any questions you might have. Thank you again.

Senator BURDICK. Thank you all.

I understand this legislation that you ask for requests 50 percent support for the project from Federal revenues and from the Inland Navigation Trust Fund. Is that correct?

Mr. PALMER. That's correct, Mr. Chairman. We support the 50 percent cost-sharing from the Inland Waterway Trust Fund. We agreed to accept that two years ago, and we continue to support that level.

Senator BURDICK. I was a little bit surprised at the life span of your lock and dam. I understand the present lock and dam we're talking about was built about 50 years ago. Is that the average life, 50 years?

Mr. PALMER. The average life of half of the locks and dams—in about the year 2000, which is 12 years away, on the Ohio River system will exceed 50 years of age.

Senator **Burdick**. It seems that our dams in the upper reaches last a little longer than that. What's the difference?

Mr. **Palmer**. We're not asking to replace them all in that time, just the ones that are most critical, sir.

Senator **Burdick**. We expect quite a few years out of our dams up there.

Mr. **Palmer**. We have one on the Monongahela River that is 80 years old today. It was built in 1908, Lock and Dam No. 3. We've been working with the Corps to rehabilitate locks and dams where it makes sense, and we ask for Congressional authorization and your support in that regard for those that need to be replaced.

Senator **Burdick**. Is there something about the engineering on the wider reaches where you can't make them durable, more permanent? Is there something about that?

Mr. **Palmer**. I don't think so. Before they get finished with the Olmsted replacement, those facilities will probably be 75 years of age. The problem at Locks and Dams 52 and 53 has to do with the river bottom there. They just poured mass concrete, a monolithic pour there, and they don't have a good way, really, to anchor the foundation there. That's part of the problem. Part of it is obsolescence. That was built in 1929, those two facilities, and those were actually the last two that were a part of the modernization of the Ohio River system at that time, so we're into another area.

Mr. **Lehman**. Mr. Chairman, the foundations were built on 30-foot pilings, and they're estimating anywhere from 40- to 80-foot pilings that they're going to put down with the new Olmsted structure. So the technology has changed, and the desire is to keep that structure, if and when a tremor occurs, to withstand what it could not have withstood back in 1929.

Senator **Burdick**. In other words, you would get more than 50 years out of Olmsted, then?

Mr. **Lehman**. I hope so, sir. You and I will be long gone before they have to replace this one.

Senator **Burdick**. I plan on staying around.

Well, thank you very much.

Mr. **Palmer**. Thank you.

Senator **Burdick**. Will the next panel come to the witness table? Mr. Hey and Mr. Sather? They will be introduced by our good friend and colleague, Senator Dixon of Illinois.

STATEMENT OF HON. ALAN J. DIXON, U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator **Dixon**. Thank you, Mr. Chairman. I apologize for being a little late. I was at a briefing in the Intelligence Committee on the question of what's occurring on the Honduras border.

Mr. Chairman, I appreciate the opportunity to be here as you hear testimony on the Omnibus Water Projects Bill, S. 2100. It's my privilege to introduce to you Dr. Donald Hey and Professor Henry Sather, who are uniquely qualified to testify to the national significance of wetlands research.

Dr. Donald Hey is President of Wetlands Research, Inc., a nonprofit organization that directs the re-creation of the Des Plaines River Wetlands. Dr. Hey has a Ph.D. in engineering from North-western University, and he served as an engineer to the Peace Corps in Malaysia and to the Army Corps of Engineers. He has authored and coauthored over 35 wetlands publications, and has recently worked on 17 wetlands projects.

Dr. Henry Sather is currently Emeritus Graduate Dean and Professor of Biological Sciences at Western Illinois University. He also serves as Adjunct Professor in the Institute of Environmental Management, as a biologist with the U.S. Fish and Wildlife Service, and is a member of the National Wetlands Technical Council.

I would like to say that we will learn a great deal about flood height reduction, water quality improvements, and fish and wildlife habitat creation from the Des Plaines River Wetlands Demonstration Project. This project, which is well underway and over 60 percent non-Federally funded, Mr. Chairman, will teach us how to naturally and cost-effectively provide an alternative flood control system, and how to lower river sedimentation as a means of reducing waterway maintenance costs. Wetlands also catch urban and agricultural run-off.

It is important to recognize that S. 2144, which would authorize money to complete the Des Plaines Wetlands Demonstration Project, is not simply a bill to re-create an Illinois wetlands. Instead, it finances the completion of a kind of wetlands laboratory where replicable research can be conducted and applied to improving our ability to restore wetlands.

Mr. Chairman, I would also like to take this opportunity to recognize and introduce to you an old friend, Mr. Nicholas Melas; he's a fellow Young Democrat with me, Mr. Chairman, from about 35 or 40 years ago. You might not notice that now. He is President of the Metropolitan Sanitary District of Greater Chicago, Mr. Chairman, and he will be addressing this subcommittee later this morning.

I would like to associate myself with Mr. Melas' comments on the Chicago Underflow Plan. I endorse Mr. Melas' efforts to have included in the water resources bill, this project to control the severe flooding problems in the Chicago metropolitan area.

Mr. Chairman, I thank this subcommittee and, of course, you, for its kind consideration, and for allowing me to join you this morning. Mr. Chairman, I thank you for all of your very kind past considerations of my requests. Thank you very, very much.

Senator BURDICK. Thank you.

You can proceed in any order that you wish, gentlemen.

STATEMENT OF DONALD HEY, DIRECTOR, WETLANDS RESEARCH, INC.

Dr. HEY. We come before you this morning to ask you and your Senate colleagues to authorize the Army Corps of Engineers to spend $2.2 million for the Des Plaines River Wetlands Demonstration Project. This morning we intend to convince you of the worthiness of our project. I think we will succeed. It is innovative and unique. It is a solid, well-thought out project with good science and sound technology. It has substantial public support and will return substantial public benefits—economic, environmental, and quality of life benefits.

This project, involving wetland restoration, directly serves important national priorities: conservation of natural resources, preservation of wildlife, reduction of flood damages, maintenance of navigation and improvement of water quality. This project addresses these national priorities through rigorous and comprehensive research. It is not just a local restoration project. it is research and demonstration, a national model, a technological necessity which has the potential for turning this country around in the way it solves the problem of flooding, dirty water, sterile environments, and endangered species. The benefits are not to Lake County, Illinois alone: they are to the country. More importantly, it promises an efficient and economical solution to the water related, environmental problems that we face today.

The Army Corps of Engineers is the appropriate agency to fund this project. This agency's responsibility stems from the Rivers and Harbors Act of 1899, the Flood Control Act of 1936 and the Clean Water Act of 1977. Accordingly, this agency is responsible for maintaining our waterways free from obstructions, preventing and controlling floods, and protecting wetlands.

For over 100 years we as a Nation have been plagued by severe flooding, fouled and polluted waterways, and declining wildlife. Despite the hundreds of billions of dollars we have spent in attempting to solve these problems, they remain with us today and are expanding. Flood losses are increasing, ground water quality deteriorating, many of our streams and rivers remain unfishable and unswimmable, and waterfowl populations are declining. These are formidable environmental problems; but, now, a new environmental concern is being raised—that of wetland losses.

Despite the continental scale of wetland losses that have occurred over the last 150 years, little attention has been given to these losses or to the relationship between these losses and the onslaught of environmental degradation. Yet, there is an important, fundamental relationship. Wetlands benignly contain floodwaters, trap sediments and other pollutants, and provide the wildlife. As we lost our wetlands, we lost a critical environmental buffer and, at the same time, we created the problems that visit us today. The preservation and re-creation of wetlands offer the most effective, economical solution to these problems.

The relationship between wetland losses and environmental degradation did not go entirely unnoticed. In 1914, an engineer with the U.S. Geological Survey observed that flooding on the Des Plaines River in Illinois was increasing in severity and frequency. He related this phenomenon to the changing land use in the tributary watershed—clearing of forests and draining of wetlands. Unfortunately this engineer did not recommend maintaining an economical balance between development and the preservation of nature's flood control facilities. Instead, he recommended that the new flood prone lands be protected by levees and dams. Before and since them, these tactical solutions have been employed all too often without achieving the desired results as the current statistics on flood losses in the United States reveal.

In the process of creating one of the worlds most productive agricultural industries, we failed to recognize the important water quality functions that wetlands serve. They recycle nutrients and trap and immobilize sediments. Without wetlands, these contaminants remain in the stream fouling and clouding the water limiting its use by man and wildlife alike. Despite the $200 billion that the federal government has invested, over the last 15 years, in construcing municipal wastewater treatment plants and despite the fact that the chemical quality of our streams is better today, the much sought after goal, making our streams and rivers fishable and swimmable, has not been achieved. In part, it is because the tactical structures that we built to control municipal and industrial pollutants do not control or treat the vast array of pollutants emanating from non-point sources. More importantly, the channelized streams required for agricultural drainage and flood control do not provide the habitat conditions for the plants and animals that are so necessary to maintain clean, productive, ecologically balanced streams. To achieve the goal of the Clean Water Act, wetlands are essential.

The common denominator to our water related, environmental problems is the loss of wetlands. Consider, for example, the Mississippi watershed. Sixty-one million acres of wetlands, approximately 8 percent of the tributary area, have been drained. If the entire flow of the Mississippi River, as measured at New Orleans, were diverted into these 61 million acres, it would take 4 months for the water to reach a depth of three feet. Is there any wonder why we suffer from flooding in this and similar watersheds? The former wetlands of the Mississippi River would provide a hundred times the wastewater treatment capacity of an equivalent concrete and steel alternative. They would remove up to 80 percent of the existing sediment load. The habitat provided by these wetlands was enormous. The effects of their loss on wildlife might best be portrayed by the vision of an empty sky which was once darkened by ducks and geese rising over the vast wetland expanses. Our wildlife refuges pale by contrast.

Dams, levees, dredging operations, wastewater treatment plants and wildlife preserves are all tactical weapons in the war being fought for a better environment. While a few battles may have been won by using these devices, we are not winning the war. These tactical weapons all to often have proved ineffective and economically indefensible. Wetlands restoration and re-creation, on the other hand, offers a strategic solution with multiple ancillary benefits. While we cannot afford, economically, to replace all of the wetlands that have been lost, well designed and managed, re-created wetlands could make the difference: healing the scarred landscape, reducing flood losses, keeping sediments out of our waterways, improving water quality and providing essential wildlife habitat.

In the Mississippi watershed, if we returned a mere 10 percent of the 61 million acres of wetlands that have been drained, we could substantially reduce flood stages, improve water quality and provide for an abundance of wildlife. These benefits could be achieved with less than a one percent reduction in the agricultural production of the watershed and at a total capital cost of less than $30 billion. The benefits will be so great and immediate that restoration will attract investment from state and local governments as well as private industry—a major new federal initiative is not in the making.

However, before launching a program, we need to know how best to restore wetlands. We need the scientific and engineering information to design, construct and, then, maintain what we have built. This is the purpose of the Des Plaines River Wetlands Demonstration Project. The project is intended to produce the information necessary to develop systematic design, construction, and management criteria.

The research work is being overseen by a 15-person technical advisory committee. The advisors represent the extensive technical expertise of scientists from a variety of organizations and institutions: Army Corps of Engineers, U.S. Environmental Protection Agency, universities and state agencies. The end products will be: a manual of design and contruction, a manual of management, and on-site interpretation of the restored wetlands.

The project is unique in several regards. First, Wetlands Research, Inc., the not-for-profit organization responsible for the project is governed by elected officials and private citizens. Three board members are Lake County, Illinois supervisors appointed by the President of the Forest Preserve District and four are private citizens appointed by the President of Open Lands Project, an organization dedicated to the preservation of open space. Wetlands Research, Inc., from its inception, has been dedicated to the broad based support and financing of this project. Funding has been provided by both public and private organizations and individuals.

The total cost of the project is $10.2 million. To date, $5.1 million has been raised—22 percent from the federal government, 66 percent from state and local governments, and 12 percent from the private sector. The overall funding strategy is to acquire 40 percent from the federal government, 40 percent from state and local governments and 20 percent from private interests. Given our past accomplishments and your support, we will achieve this funding goal.

With the money that we have received, we have been able to organize, design and partially implement the restoration and research work. Once the restoration is completed, the project will afford full-scale testing of design and management procedures, using the site's 450 acres of destroyed and highly disturbed wetlands and three miles of degraded river channel. Within this living laboratory, water movement will be rigorously controlled and monitored and the changes in flood flows, sediment loads, water quality and wildlife will be assessed. When the project is finished, the owner of the land, the Lake County Forest Preserve District, will maintain the wetlands.

This laboratory will be available to interested scientists from across the country to study wetland functions. The results will lead to cost effective, readily sustainable solutions to our water related, environmental problems—problems that the Army Corps of Engineers is responsible for solving. I urge you and your colleagues to support S. 2144 so that this important work can be completed.

Senator BURDICK. Thank you.

STATEMENT OF J. HENRY SATHER, PROFESSOR EMERITUS, WESTERN ILLINOIS UNIVERSITY

Dr. SATHER. I am Henry Sather from Western Illinois University. Mr. Chairman, I appreciate the opportunity to appear before the committee to testify on behalf of S. 2144.

During recent years we've seen a rather striking change in attitudes toward wetlands. Since the time of early settlement up until recently, wetlands have been regarded as wastelands that could best be converted to other uses, so they've been drained, diked, filled, et cetera. But during recent decades we have learned that wetlands are actually some of the most productive, most complex, and most varied of the ecosystems that exist on earth. We have learned that they perform a variety of functions that in the past we never dreamed that they performed. We did know that they provided important habitat for waterfowl, but during recent decades we have learned that they perform other functions. We know now that many of them are involved in ground water recharge and discharge, flood flow alteration, sediment retention, water quality maintenance, shoreline stabilization, and that they provide a habitat for a great variety of animal and plant species. There is a large number of our endangered and threatened species that are dependent upon wetland habitats.

Now, Congress has responded to the change in our attitudes toward wetlands by passing various statutes in an attempt to stem the tide of wetlands destruction. Some of these are the Migratory Bird Conservation Act, the Duck Stamp Act, the Wetlands Loan Act, the Land and Water Conservation Fund, the Water Bank Program, and, more recently, the swampbuster provisions of the Food Security Act of 1985 and the Emergency Wetlands Act of 1986.

Proper implementation of these statutes requires an ability to objectively identify and evaluate the functions that individual wetlands and complexes of wetlands perform. In other words, we need to know how to determine what functions a wetland may be performing, and we need to know the probable significance of those functions at the local, regional, and national level. They vary. We also need to know how various types of impacts on wetlands modify the functions of wetlands so that if there is an impact, we would know how to mitigate that impact by either creating new wetlands or by restoring former wetlands.

The same type of information that is required to implement these various statutes to stem the tide of destruction is also required in carrying out wetland acquisition programs. It would be ridiculous to think that we could acquire all wetlands. In light of that fact, then, it is necessary that we be able to evaluate the functions of wetlands so that we can determine which ones have the highest priority insofar as acquisition is concerned.

There is a major Federal interagency effort underway at the present time to develop a system for evaluating wetlands; to assess the value of wetland functions. I say it's an interagency effort; there are about 15 Federal agencies involved in a cooperative program to try to develop this system. It is called the Wetland Evaluation Technique, or WET. It is based upon interpretations of information found in the scientific literature. We look in the scientific literature for clues as to what a wetland is doing. In the development of this system, we have found rather serious gaps in our knowledge of how wetlands actually function. A large part of the research program of the Corps of Engineers, and also a new wetland research being developed by the U.S. Environmental Protection Agency, is designed to solve some of these major gaps in our knowledge of wetlands so that we can have a better system for evaluating these functions. Fortunately, the Des Plaines River Demonstration and Research Project is uniquely designed to attack some of these problems. These problems are very difficult to attack in natural wetlands because you do not have control over the hydrologic regimes. In the Des Plaines River Project we do have that type of control. We will have control over the amounts of water coming into the wetland, and the amounts of water leaving the wetland. We are able to analyze the water at the time it enters the wetland, as it passes through, and at the time it leaves the wetland. So we will have an outdoor laboratory that will enable us to attack some of these knotty problems that we don't have the answers to at the present time.

In my judgment, it only makes good sense, particularly at this time of very severe budgetary restraints—to pool our resources to attack these problems by utilizing the unique facilities that exist at the Des Plaines River Demonstration and Research Project.

Thank you.

Senator BURDICK. Thank you.

You have labeled this work a "demonstration project," but isn't it really experimental research?

Dr. HEY. Yes, sir, it is. What we are creating is a living laboratory that, when the project is finished, the Lake County Forest Preserve District will maintain the wetlands, and they will stand as demonstration of the benefits of wetlands to solving some of our national environmental problems.

Senator BURDICK. When Mr. Sather was testifying he touched on an area that I want to ask about. In your studies are you going to delve into the area of how to acquire these wetlands after you've identified them?

Dr. SATHER. Well, that wouldn't be part of our scientific investigation. It's a very important aspect, though, that would follow.

The information gained from the study area will be vital in determining which ones should be sought after first. In helping the decision-makers on acquisition it would be an added tool for them to use in arriving at wise acquisition decisions. At the present time there is a great deal that we don't know about some wetlands.

Senator BURDICK. What I'm referring to is that many of our wetlands are in private ownership, and to acquire them we poses a financial problem. I would trust that you would go into that too when you make your study.

Dr. SATHER. Information derived from the studies will certainly be helpful in that regard.

Senator BURDICK. As you know, I come from the "duck factory of the world," North Dakota. Some of our farmers are going to be a little sensitive about giving up their land without payment.

Dr. SATHER. Yes, I know. They're very sensitive. And they have a point.

Dr. **Hey**. Sir, I might add one comment to your question.

There are ample lands today that are derelict and abandoned, that need to and should be restored. That is really the focus of our research effort here, restoration. Mined land, abandoned flood plain land, land that can no longer serve the economic purpose that it originally did is disturbed and needs to be put back into use. It's an important resource that we can better utilize.

Senator **Burdick**. I don't know whether we've got any abandoned lands at all in North Dakota. It's all number one prime land in North Dakota.

Dr. **Hey**. Well, maybe we won't be restoring wetlands in North Dakota. There is certainly plenty of restoration work to do along the Illinois River and elsewhere.

Senator **Burdick**. Thank you very much.

Dr. **Sather**. Thank you.

Senator **Burdick**. The next panel is Mr. Gary Failor of the American Association of Port Authorities and Mr. Payne, Deputy Executive Director and General Counsel, Virginia Port Authority.

Gentlemen, you may proceed as you wish.

STATEMENT OF GARY FAILOR, AMERICAN ASSOCIATION OF PORT AUTHORITIES

Mr. **Failor**. Good morning, Mr. Chairman. My name is Gary Failor and I'm the General Manager and Seaport Director for the Toledo-Lucas County Port Authority. I am also Chairman-elect of the American Association of Port Authorities.

The AAPA represents virtually every public port authority in the United States, as well as all the major port agencies in Canada, Latin America, and the Caribbean.

Mr. Chairman, on behalf of the Association I would like to commend you for sponsoring S. 2100, the Water Resources Development Act of 1988. I would also like to take this opportunity to thank the members of the committee for the many years of work that have led to the restoration of the Civil Works program.

Enactment of Public Law 99-662 in November, 1986 was an historic event, ending a long national debate over water development policy. However, the new law must be considered only the first critical step toward the regularization of the Federal role in development of the Nation's channel navigation system. If a project is economically justified and supported throughout the arduous planning process, Congress should then consider authorization in a timely manner. We need this legislation every two years.

In general, we support the technical policy changes in S. 2100, especially the correction which would allow the deduction of utility relocation expenses from the 10 percent repayment requirement.

Mr. Chairman, there are two interpretations of the law made by the Corps that we believe are incorrect. First, the purchase of land to be used for environmental mitigation has been determined by the Corps of Engineers to be 100 percent local sponsor contribution. This interpretation is in direct conflict with the language in Section 906(c) which says that mitigation costs are to be shared like other project costs.

Therefore, we ask the committee to direct the Corps to change its interpretation.

Secondly, the Corps has determined that Section 204, allowing project sponsors to construct a project with subsequent repayment of the Federal share, does not apply to continuing authority small navigation projects. We see no reason why the potential cost savings provided to the Federal Government by the title II incentives should not be made available to these projects as well.

There are also a number of technical amendments we would like to see made to the act. We have addressed these issues in our written comments; however, I would like to bring several key issues to the committee's attention.

First, the Federal Government procurement law, collectively referred to as the Anti-Deficiency Act, prohibits the Corps of Engineers from allowing construction to begin until non-Federal funds are deposited in the U.S. Treasury. However, these monies are not paid by the Corps to the contractor until an agreed-upon segment of the project is finished.

Our ports want to make their contributions when the bill is payable, not when construction begins or any other arbitrary advance payment schedule. The Corps needs an exemption from these general governmental statutes; in fact, this issue is simply a matter of equity.

The second technical amendment is that the disposal of dredged material is often the most difficult problem associated with harbor channel improvement. Although many factors are weighed in the decision-making process, the economic impacts of the final decision may vary widely because the law gives project sponsors the sole responsibility for the costs of building sediment containment areas.

We believe that all the various disposal alternatives should be considered part of the total project cost, to be shared according to section 101(a)(1). Disposal of material from Federal channel bottoms is clearly integral to the overall project. Since the cost of the dredged material disposal area can currently be deducted from the 10 percent repayment, the proposal would not necessarily increase the Federal contribution but would add a measure of consistency among all the projects.

The AAPA would also like to see Section 101(a)(4) amended to require the courts to enforce their Section 10 permits for channel depths of less than 45 feet. Because the law calls for 50/50 cost-sharing between the project sponsor and the utility owner for relocation in channels exceeding 45 feet in depth, the Corps has agreed to use its Powers of Navigational Servitude to force the utility owner to comply. For depths of less than 45 feet the project sponsor alone must convince the utility owner to relocate the transmission line, even though the Federal Government issues the permit.

Finally, the Corps of Engineers' regulatory program continues to be of great concern to our members. The Corps has recently asked for comments on permit delays for navigation improvements, and we have responded to that request. Briefly, to summarize our response, it often appears that the Corps is unable or unwilling to manage that application process themselves.

In summary, we appreciate the committee's interest in addressing the need for a strong and viable national water resources program and thank you for this opportunity to present our views.

OPENING STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA

Senator BURDICK. Two of our most valued members have entered the chamber. Senator Warner, do you have a statement?

Senator WARNER. Thank you, Mr. Chairman. I'd like to ask that my statement be inserted into the record, and I welcome Mr. Payne. Mr. Payne is an assistant to Bobby Bray; those two gentlemen, together with Virginia legislators, helped spearhead the project now underway to deepen our channels. He has brought in his testimony this morning some suggestions that we will take into consideration as we review this piece of legislation.

I thank the Chairman.

[The prepared statement of Senator Warner follows:]

OPENING STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA

Mr. Chairman, thank you for scheduling these important hearings on S. 2100, the Water Resources Development Act of 1988.

Time and time again I joined other Senators and my fellow Virginians in testifying before this Committee on the need for comprehensive water resources legislation. This is my first experience in participating in hearings on water resources legislation as a member of this committee, and it is indeed a welcome role for me.

I am proud of the modest part that I had in developing some of the ideas for legislation that was eventually signed into law after long years of work—many of the people who contributed to that landmark legislation are in the room today. I welcome these old friends to the Committee and once more express my appreciation for all their hard work on this vital subject.

I welcome Stan Payne, the General Counsel and Deputy Executive Director of the Virginia Port Authority, to the hearing. One might say that Stan and his boss Bobby Bray, the Executive Director of our port, have been with us on this legislation over the long haul. They were extremely helpful from the very beginning in developing the water resources legislation and have been leaders in implementing the law.

Under their leadership and that of three Governors of Virginia, the Virginia Port Authority signed the first local cooperation agreement for cost sharing of any major port project in the United States and was the first port project to begin construction of its improvements. We're very proud in Virginia of our port of Hampton Roads and the exciting improvements that are underway. I commend the Governor of Virginia, the Virginia Port Authority, and the Norfolk District of the Corps of Engineers for their outstanding leadership and for being on the cutting edge of the act.

I also want to express my deep appreciation for the professional staff of this Committee who have worked on the water resources legislation initially and are now endeavoring to refine it. They are to be commended for taking the time to visit the port of Hampton Roads to witness firsthand the work underway there.

In its testimony the Virginia Port Authority recommends four changes in S. 2100:

Local sponsors of deep draft projects should receive credit toward the 10% payback for their costs associated with utility relocation.

The tunnel armor which must be installed on the Chesapeake Bay Bridge Tunnel should be considered as a Federal cost because the tunnel was originally built—as opposed to a bridge—in deference to Federal military needs in the port of Hampton Roads. While I was not on this Committee at the time it wrote the 1986 Act, it is still my recollection that the Committee's bill once contained a provision which spoke directly to this issue of benefits which flowed to the defense component of our government. I think it is important that this Committee consider this matter, and I note that Section 207 of S. 2100 would seek to establish that as a policy in the future. I hope that Mr. Payne will address that matter in detail for the Committee.

The Committee should direct the Corps to acknowledge the Commonwealth of Virginia and City of Portsmouth's rights to the Craney Island Dredge Disposal Area so that planning can begin its development after its useful life as a dredged disposal area is completed. The Corps should explore the feasibility of having parcels of the disposal area revert in the nearer term.

Finally, one of the most difficult problems which we have experienced in Virginia is that of disposal of the sand from the Hampton Roads improvement project. I look forward to examining this problem more closely to see if the intent of the Congress is being implemented and whether regulatory or legislative changes are necessary.

Thank you, Mr. Chairman, I look forward to the testimony of all our witnesses this morning.

Senator **BURDICK**. The Senator is here from the other side of the Red River in Minnesota. Senator Durenberger, do you have anything to say?

Senator **DURENBERGER**. Mr. Chairman, thank you for the opportunity, but I think my statement yesterday probably covered it.

Senator **BURDICK**. All right, Mr. Payne, you may proceed.

STATEMENT OF J. STANLEY PAYNE, JR., DEPUTY EXECUTIVE DIRECTOR AND GENERAL COUNSEL, VIRGINIA PORT AUTHORITY

Mr. **PAYNE**. Thank you, Mr. Chairman.

Mr. Chairman and committee members, I am J. Stanley Payne and I am Deputy Executive Director and General Counsel of the Virginia Port Authority. I speak today on behalf of the Port Authority and the Commonwealth of Virginia.

The Virginia Port Authority is proud to have signed the first local cooperation agreement for the cost-sharing of a major port project, and we're proud to be local sponsor for the 1986 Water Resources Development Act's first major project start. We're proud to be on the cutting edge of that act and the policy flowing from it.

While this role of pathfinder has been difficult and has certainly made implementation of the act easier for others but not necessarily us, we would like to acknowledge members of the Corps of Engineers' policy-level staff—Bory Steinberg, Ed Dickey, and others—who have made the transition to partnership much more palatable. I would note also that Virginia is serving as a pathfinder as well for the beneficial use of dredged materials through the amended section 933 of the act.

I will not address today the status of the Corps/local sponsor partnership. There is need for more time to determine if we are where we ought to be. It is clear at this time, however, that there are some changes within the organizational structure of the Corps of Engineers that need to be made, as well as within the rules, regulations, and policies promulgated by the Corps' bureaucracy. My own feeling is that local sponsors may become so disenchanted in the future with paying to maintain the Corps' bureaucracy and overhead and playing second fiddle to military projects that eventually many will choose to construct the projects themselves for Federal reimbursement.

Now to some particulars.

First, for water main or utility relocation. Simply put, local sponsors of deep draft projects would like to be able to receive credit toward the 10 percent payback for our costs associated with utility relocation. This is especially fair since most, if not all, utility lines were laid pursuant to Corps permits requiring utility owners to relocate those lines, at their own cost if necessary. We would like to have this change apply to our 50-foot project now in progress since the payback period has not begun.

Second is tunnel armor for the Chesapeake Bay Bridge Tunnel. The Chesapeake Bay Bridge Tunnel under the Thimble Shoal Channel must have a protective covering when we deepen to 55 feet. This cover has been designated a "local cost" by the Corps of Engineers. However, it is clear, and we will provide evidence to this effect, that the span incorporated a tunnel in deference to Federal military interests which significantly raised overall costs of the bridge tunnel itself. We ask that this Federal interest be recognized and that the cost of covering the tunnel—small in comparison to the cost incurred in incorporating the tunnel compared to the bridge span originally intended—be categorized as a Federal cost.

Senator WARNER. It should be made very clear that the State, at the time this was designed, desired to do an overhead.

Mr. PAYNE. Yes, Senator, the cost figures—and we have that right here, the so-called "paper trail"—shows that the tunnel would be 10 times more expensive than the bridge.

Senator WARNER. But we went to the tunnel design specifically at the request of the Federal Government on behalf of the military, primarily the Navy—as opposed to the bridge span as originally planned.

Mr. PAYNE. Yes, sir.

Senator WARNER. Thank you.

Mr. PAYNE. We know we'll never recover the total cost of putting that tunnel in place, but in fairness the tunnel's cover ought to be a Federal responsibility.

Senator WARNER. Do you have an estimate of that cost?

Mr. PAYNE. It's in here, Senator, within this documentation. But we know it was approximately 10 times the cost of the bridge originally intended.

Senator WARNER. The armor costs?

Mr. PAYNE. The armor costs will range between $4 million and $5 million, we think.

The third aspect we'd like to talk about is the Craney Island dredge disposal area which was built on valuable State bottom land given at no cost to the Federal Government. Now, as the Corps and VPA study long-term successor sites to Craney Island, it is necessary to acknowledge Virginia's reversionary rights to this area so that the Commonwealth and the City of Portsmouth can start planning the use of this valuable Virginia resource. In addition to this acknowledgement of ownership, we would ask that the committee direct the Corps in this long-term disposal study to explore the technical feasibility of having parcels of the disposal area revert in the nearer-term future rather than waiting the many years for the absolute end of the useful life of Craney Island.

Finally, VPA would ask that this committee investigate the implementation of section 933, which provides for Federal cost-sharing of the placement of dredged material on beaches to make sure that the standards being applied by the Corps of Engineers are in concert with your intent behind that section. In other words, if standards that are unreasonably strict are being applied, few projects will qualify and we'll go on with "business as usual" with dumping precious sand overboard rather than using it for recreation and to prevent erosion and for storm damage protection.

I thank you for this opportunity to comment and stand by to answer any questions you may have.

Senator Burdick. Senator Warner?

Senator Warner. Thank you, Mr. Chairman.

Mr. Payne, would you elaborate on why the Port Authority feels that Federal funds should support the tunnel armor? In my question to you I think you covered several points, but I want to make sure that all points relative to this issue are made today in the record.

Mr. Payne. Senator, I used one of the people on my staff full-time for the past couple of months to find the so-called "paper trail" as to why a tunnel was put in place of that bridge. We found not a paper trail but a "paper super-highway." We have all the information from those files. Basically what it says is that you needed a Corps permit in order to build that bridge, that the Corps would not issue a permit if the bridge was going to be in place because they were going to ask the Navy to comment. The Navy did comment. The Navy said, "Put a tunnel." Without the tunnel we wouldn't have had a permit nor would we have had the Chesapeake Bay Bridge Tunnel.

Senator Warner. All right.

Can you refine that estimate of cost? In other words, if it's the will of the members of this committee to try and put in an amendment to cover those costs, do you think you can refine those costs?

Mr. Payne. We can do that. We'll be happy to present that later after we've discussed it with the Corps of Engineers, although sometimes their estimates haven't been the greatest.

Senator Warner. All right.

[The information requested follows:]

1. The tunnel cover has been estimated by the Corps to cost $3,861,000.00 (55-foot Outbound Element Supplemental Engineering Report, September 1987).

2. In a memorandum dated 13 April 1955, the District Engineer, Corps of Engineers, estimated the cost of building a tunnel versus a bridge at $2,500.00 per foot for a tunnel, $250.00 per foot for a bridge, or 10 times more per foot.

The Findings of Fact section of the Corps of Engineers Record of Permit, dated 4 August 1958, contains in Item 11 (a.) the estimated costs of tunnel and channel bridges, with and without navigational increments.

This document reflects the following information concerning Thimble Shoal Channel: "The estimated construction cost of the tunnel and appurtenances is $43,650,000. The estimated construction cost of low trestle to cross the waters occupied by the tunnel is $4,000,000, representing an increment of $39,650,000 for construction to meet the present and prospective demands of commercial and naval navigation. The estimated annual operation cost of the tunnel is $152,000; and for the trestle, $30,000, representing an increased operation cost of $122,000 for navigation. The estimated annual maintenance cost of the tunnel is $60,000; and for the trestle $25,000, representing an increased maintenance cost of $35,000 for navigation."

The length of Thimble Shoal Channel Tunnel is 5,738 feet from portal to portal.

Mr. Payne. If I could, Senator, I'd like to comment on one further thing in regard to the military interest in Hampton Roads, and that is that I don't think that the tunnel is the only thing that the Port has ever done that has benefitted the Naval presence in Hampton Roads. It's incredible at this point in time that the Navy still insists that our deepening of our channels has not aided their interests at all. I personally find that incredible, that deeper channels don't assist our Federal military effort, especially with the world's largest naval base being in Hampton Roads.

Senator **Warner**. That's a question of the draft of the various ships that utilize it. But anyway, I'm sure that the facts are there for someone to debate this issue. I don't question that the local area has done a great deal and will continue to do a great deal, but reciprocally the military do a lot for the area, so it's a nice friendly debate that goes on through the years. I've been involved in it ever since I was Secretary of the Navy.

Getting on to another issue here, I understand that Virginia Beach is eligible for Federal cost-sharing for the sand placement. Are there other areas that the Port Authority feels that assistance for the sand placement would be needed?

Mr. **Payne**. Senator, we've served as a pathfinder for the amended section 933 which says that if the Corps can find a public interest, the Federal Government will cost-share the putting of this dredged material onto beaches rather than dumping it at sea. Well, Congress has said that it is their intent to make use of this material, but unfortunately it's the Corps that has developed the standards. Our belief is that the standards are so strict that most projects won't qualify. We have an example of that, and that's at East Ocean View Beach in the city of Norfolk. The city of Norfolk funded such a 933 study and the Corps came back with a very thick study and basically said that there was no public interest in putting that sand up there or in the Federal cost-sharing of that which, again, is kind of hard to believe. So what will happen is that sand will be dumped instead of putting it up on the beach.

Senator **Warner**. Thank you for joining us today.

I thank the Chairman.

Senator **Burdick**. Thank you, gentlemen.

Our next witness will be Dr. Campbell, Resource Economist, National Wildlife Federation.

STATEMENT OF DR. DAVID CAMPBELL, RESOURCE ECONOMIST, NATIONAL WILDLIFE FEDERATION

Dr. **Campbell**. Good morning, Mr. Chairman.

Senator **Burdick**. Good morning.

Dr. **Campbell**. Thank you for this opportunity to present the testimony of the National Wildlife Federation on S. 2100.

As you know, the Federation was a major participant in the resolution of the major water policy issues that resulted in the passage of Public Law 99-662, the Water Resources Development Act of 1986. We are also pleased that the sponsors of the bill have not attempted to undo the major reforms agreed to and incorporated in the Water Resources Development Act of 1986. Again, we urge you to resist all attempts to roll back the important cost-sharing provisions that your committee fought so hard to include in that historic compromise bill.

We also support the committee's intention to return to a regular timetable authorizing new Corps projects every other year. In addition to those projects we believe the committee will be able to improve upon and clarify the important reforms it achieved in 1986.

With regard to the 11 projects that are being proposed in the bill, we believe they should be subject to the same five-year sunset provision that the projects in Public Law 99-662 were subject to.

There has been testimony earlier today about the Olmsted lock and dam on the Ohio River. We believe that the committee should withhold judgment on that lock and dam at this time. You might wish to request and review information relating to several aspects of the proposed project before authorizing it. We don't believe a delay will disrupt waterway traffic because the two large locks at each dam were rehabilitated last year, since the Corps study was completed and since the report of the Chief of Engineers that you have in hand was tendered to you.

I was pleased that you asked questions about the length of life of these locks because as you know, around the world there are some locks operating that are 300 years old; in Britain, for example. I know of one on the St. Mary's River that was built in 1906; several in Canada date back; I believe, to the 1830's.

The report of the Chief of Engineers, dated October 30, 1986, recommends replacing those two existing locks and dams, 52 and 53, at an estimated cost of $775 million which, even on St. Patrick's Day, is an awful lot of green. Each existing lock and dam consists of a 110 by 600 foot lock that was built in 1928 and 1929, but they also each have same 110 by 1200 foot lock that were built within the past 20 years and, as I mentioned, underwent major rehabilitation last year.

The proposed lock would be at a brand new site and contain two 1,200 foot locks adjacent to the Illinois bank. The environmental impact statement notes that the construction could interfere with the nesting and feeding patterns of American bald eagles and particularly Canadian geese, and this construction could take place for a long period of time, 10 to 20 years, I think.

There are several reasons why we believe you should reexamine this proposal and withhold your judgment at this time. The Illinois Department of Transportation, whom you would think would be a proponent of this dam, wrote three letters to the Board of Engineers for Rivers and Harbors claiming that the Corps' feasibility study had understated the capacity of the existing facilities and overstated potential benefits. The Director of the Illinois DOT believes that innovative repair and improvements to the existing facilities could improve their structural integrity, operating performance, and service life. You might wish to obtain copies of those three letters from the Board of Engineers for Rivers and Harbors.

We haven't analyzed the economics of the lock and dam yet, but we did look at the Gallipolis lock and dam study two or three years ago. We found quite a bit of overestimation of the benefits. We also performed a congestion fee analysis where you pretend there is a congestion fee there, just to see how that would control the traffic. We found that the costs of moving traffic diverted by this simulated congestion fee would be less than the cost of the proposed locks. We believe that the Corps should be required to perform a similar congestion fee analysis for these locks and dams.

The project also appears to have some major design problems. The costs two years ago were estimated at $566 million; now they've jumped to $775 million. That's partly for the earthquake problems you mentioned, but there may be others.

One of the reasons that the construction may extend for a long period of time is that there are already commitments for monies in the Waterway Trust Fund that would take all the money that's in there now and what's expected to come in, so that's another reason that Congress could delay its decision in authorizing this project.

One last item here. Section 207 proposes that the military use of these harbors be credited against the local cost share. We oppose this section 207. It is essentially an argument to give weight to a lowering of the non-Federal share of harbor improvements. Military benefits are already subsumed in the 50 percent of the cost that the Federal Government already bears. If this provision remains in the bill we suggest the entire provision be made applicable only when and to the extent that the share of project costs allocated to military benefits exceeds the Federal share of the project under current law.

The rest of my testimony will be submitted for the record.

Senator BURDICK. It will be received.

Did you say on the Olmsted proposition that there were some repairs or alterations made in the last few years on it?

Dr. CAMPBELL. Yes, major rehabilitation.

Senator BURDICK. Major?

Dr. CAMPBELL. Yes, major.

Senator BURDICK. What was done, in a general way?

Dr. CAMPBELL. I think there was a lot of strengthening done. If you look at the report of the Chief of Engineers, they do outline the repairs that would be made, but they classified those as major rehabilitation.

Senator BURDICK. Is it your opinion that it's not in dire need of repair at this moment?

Dr. CAMPBELL. At this moment. It may be later, but it should be studied, I think. There should be questions asked.

Senator BURDICK. How long ago were these repairs made that you're talking about?

Dr. CAMPBELL. In 1987.

Senator BURDICK. When?

Dr. CAMPBELL. In 1987.

Senator BURDICK. Did those repairs have anything to do with traffic capacity?

Dr. CAMPBELL. I'm not certain. I haven't looked at that report for about three years myself, and I was unable to get a copy in time.

Senator BURDICK. In other words, they may have been structural and not have increased capacity? Is that possible?

Dr. CAMPBELL. Right.

[A letter from Charles F. Lehman, vice president of American Commercial Barge Line Co., relative to the testimony of Dr. Campbell follows:]

American Commercial Barge Line Company
Box 610, Jeffersonville, Indiana 47130
Area Code (812) 288-0100

March 25, 1988

Honorable Quentin N. Burdick
United States Senate
Committee on Environment and Public Works
Washington, D.C. 20510-6175

Dear Senator Burdick:

As you may recall I testified before the Subcommittee on Water Resources, Transportation, and Infrastructure on March 17, 1988 when you Chaired the hearing on S.2100. After our panel testified, Dr. David C. Campbell appeared in behalf of the National Wildlife Federation. I was deeply concerned at what I perceive were unfactual misrepresentations which he made before the Subcommittee. I would like to attempt to correct any unfavorable impressions he may have left with the members of the Senate regarding the Olmsted Lock and Dam project.

Dr. Campbell stated that there was no need to authorize the Olmsted replacement at this time because the existing temporary locks at Locks and Dams 52 and 53 have been rehabilitated since the Corps' study of the area was completed. His testimony later said the larger locks were rehabilitated in 1987.

The sheet piling temporary lock structure at Dam 52 was completed in 1969. At that time the Corps estimated that it would last 10 to 15 years as they anticipated Congress would authorize the construction of a new structure which was in the long range planning for the Ohio River system by the Corps of Engineers. Temporary Lock 52 exceeded its maximum estimate useful life four years ago.

The temporary lock structure at Dam 53 was constructed somewhat more recently, and went into operation eight years ago in 1980. Its construction was undertaken apparently when the Corps realized that it would take longer to study and authorize the needed replacement lock on the Lower Ohio.

The rehabilitation work at the temporary Lock 52 was actually started at the end of the ten year estimated life of the temporary project, in 1979. The work included repairs to the 600 foot lock, the dam itself, and very little repair to the temporary 1200 foot lock. This program was completed last year. As was stated, the program covered a period of actually nine years. The rehabilitation costs were those over and above normal maintenance costs. The total rehabilitation amount spent on Lock and Dam 52 was $8.9 million and the amount spent on 53 was $4.6 million. Interestingly enough, when I requested the amount of these totals spent on the temporary 1200 foot locks they were less than ten percent of the total rehabilitation cost. The amount spent on temporary Lock 52 was less than $1 million and that spent on temporary Lock 53 was a little over $100 thousand. This could hardly be called major rehabilitation.

This so-called major rehabilitation work is simply to insure the structural stability and operation of the existing outmoded locks and dams. The rehab work will not keep the lock and dam operational for any lengthy period. It was only undertaken and completed to allow the structures to continue to properly function until the replacement at Olmsted can be built.

Normal maintenance at Lock and Dam 52 and 53 will continue to cost around $500 thousand to $1 million in constant dollars through the year 2000. This is more in total than the completed rehabilitation work expenditures. If new construction is not started on Olmsted soon the Corps will have to program a much more extensive rehabilitation program before the turn of the century.

The Corps has already satisfactorily responded to the concerns raised by the State of Illinois which were restated by Dr. Campbell. As I understand it, the Governor of Illinois has written a letter in support of the project. Therefore I will not reiterate our previous correspondence regarding the concerns originally raised by the State.

Dr. Campbell off-handly remarked that the National Wildlife Federation had not analyzed the Corps Feasibility Study but inferred the estimated tonnages projected to transit the site were probably overstated. The Lower Ohio River system is currently one of the fastest growing commodity tonnage areas on our waterways. The present estimate of the Corps may, in fact, be somewhat understated rather than exaggerated.

The next statement made by Dr. Campbell was in regard to congestion fees. As you probably know, congestion fees are simply a tool to never replace any project. The theory being that as traffic grows the higher priced tonnages would bid for the space available. If you could not afford the bid price you go to the end of the line and wait either until space is available or you can afford to outbid someone else. This simply means that the price gets higher and higher until the point of diminishing returns applies and the product leaves the waterway because it is no longer competitive. In any case, it makes all the end products more costly, that of the higher priced product in transit and that of the lowest cost commodity. The final result is no project would ever get past the first phase of congestion due to space pricing, therefore no project would really ever exceed its capacity. The conclusion would be that no project would ever need replacement even though the benefits to the public would far exceed its replacement costs..

Presently, scheduled construction times for approximately a ten year period, including the Olmsted project at its estimated cost of $775 million, there is enough money in the Inland Waterways Trust Fund to build the project with the 50 percent cost share from the fund. The Inland Waterways Users Board, set up by Congress in the 1986 water resource legislation, is acutely aware of the cash flow within the trust fund and will be watching the situation regarding all projects in its reports to Congress.

In summary, we believe the Olmsted project has been thoroughly studied and found to be economically and environmentally sound. Hopefully, the Senate will authorize this project quickly so we continue to assure a sound infrastructure on our waterways.

Please include these remarks in the official record concerning S.2100 and the Lower Ohio River Navigation Project, Olmsted Lock and Dam. If you require any further information please do not hesitate to call.

Yours very truly,

Charles F. Lehman

CFL:bjs

Senator BURDICK. Thank you.

Our next witness is Albert Grant, President of the American Society of Civil Engineers.

Welcome to the committee, Mr. Grant.

STATEMENT OF ALBERT A. GRANT, PRESIDENT, AMERICAN SOCIETY OF CIVIL ENGINEERS

Mr. GRANT. Thank you, Mr. Chairman. In the interest of time I will abbreviate my written remarks, which I would like included in the record.

On behalf of the more than 100,000 members of the American Society of Civil Engineers I do appreciate the opportunity to testify on Section 205 of S. 2100, the Water Resources Development Act of 1988.

Section 205 of this bill encourages the U.S. Army Corps of Engineers under existing authority, whenever feasible, to promote long- and short-term cost savings, increased efficiency, reliability, safety, and improved environmental results through the use of innovative technology in all phases of water resources development projects and programs under the Corps' jurisdiction. ASCE strongly supports the thrust of Section 205.

A top priority for ASCE is to take a leadership role in assuring the quality and value of current and future infrastructure investments through increased research and productivity in the design, construction, and management of major public works projects. Water resource projects are an integral component of the Nation's public works infrastructure.

In this era of fiscal constraint it is imperative that public and private institutions explore new ways of deriving more quality and value from every infrastructure dollar invested. Given current and near term Federal budget realities and the vital linkage between a sound infrastructure and U.S. economic health and competitiveness, more infrastructure innovation is necessary, not less.

It is important to remember that there are hundreds of billions of dollars' worth of public works assets in the United States, including many water projects. Just a slight increase in efficiency or cost saving can have a tremendous economic benefit for the Nation.

Section 205 would give the Corps additional impetus to develop innovative solutions in pursuing its water resources development mission. Section 205 contains five excellent provisions to further this goal.

Mr. Chairman, I have several observations about the fifth goal, which is to encourage greater participation by non-Federal project sponsors in the development and implementation of projects.

The public is generally under the impression that research, development, and innovation automatically leads to superior design, increased efficiency, and cost savings. Sometimes this is true, but more often new technology takes time to develop fully. Initial costs associated with new technology may run a little higher than the conventional technology. This is not unusual and the public needs to be sensitized to this reality.

While innovation generally pays off in the future, there are those infrequent occasions when a new technology may not work out. Therefore, with respect to flood control projects, for example, where the local beneficiaries are expected to pay 25 percent of a project's cost, there may be a reluctance to go along with new, untried, yet innovative solutions. Significant local funding is involved and, understandably, local interests may want a relatively sure or safe solution.

To overcome this potential problem perhaps the Corps of Engineers should establish a contingency fund whereby the Corps could take alternative corrective action in the unlikely event of an innovative solution which does not work. Such an approach might well allay the concerns of local project sponsors and create more incentives and opportunities for the Corps to demonstrate innovative technologies.

Mr. Chairman, I want to be careful here not to suggest or create a potentially open-ended financial liability for the Corps and the Federal Government. However, we may need to find some type of incentive to encourage non-Federal sponsors to consider the use of innovative technologies.

In closing, I wish to underscore ASCE's support for section 205 which asks the Corps to redouble its efforts in the area of innovative technology. Given the experience, resources, and talent of the Corps of Engineers, such an effort appears very worthwhile.

My comments concerning Section 205 are intended to suggest a possible way of strengthening this language to achieve the desired results, that is, greater demonstration of innovative technologies. ASCE stands ready to assist the committee in achieving this goal.

Thank you, sir.

Senator BURDICK. Mr. Grant, Senator Stafford told me he wanted to be here to hear your testimony but he had a conflict. He wanted you to know that.

Mr. GRANT. Thank you.

The Senator from South Dakota?

Senator PRESSLER. Senator, I commend you for holding these hearings. I look forward to reading the testimony of our witnesses. I've had three committee hearings going at the same time this morning, so I've got some catching up to do, but I want to thank our witnesses for their fine testimony. It's a very important subject in my State, relating to South Dakota, because we have so many similar projects.

Thank you very much.

Senator BURDICK. The committee will be in recess for five minutes.

[Recess.]

Senator BURDICK. Our next witness will be Donald L. Stokley of the American Public Power Association.

At this point a statement by Senator Hecht will be made a part of the record.

[Senator Hecht's statement follows:]

STATEMENT OF HON. CHIC HECHT, U.S. SENATOR FROM THE STATE OF NEVADA

Mr. Chairman, I appreciate the opportunity to voice my strong support for the Truckee Meadows flood control project which is among the 11 water projects to be authorized by S. 2100 and S. 2101. This project will correct long-standing flood control problems in Truckee Meadows, Nevada.

The Truckee Meadows area, which includes the cities of Sparks and Reno, has a long history of floods. Particularly damaging floods occurred in 1950, 1955 and 1963. In 1964, the then Committee on Public Works of the United States Senate issued a resolution requesting the Department of the Army's Board of Engineers for Rivers and Harbors to review a report on the Truckee River and its tributaries with a view to providing additional flood protection to the area known as Truckee Meadows, at and below Reno, Nevada. Now, over 20 years later, we are on the verge of approving this long-overdue project.

The Truckee Meadows area is experiencing rapid population growth and is, in fact, one of the fastest growing regions in the nation. Population in the Reno-Sparks metropolitan area increased from 121,000 in 1970 to 194,000 in 1980. In addition, industrial land use, such as warehousing and manufacturing, is expanding and displacing traditional agricultural pursuits. Of course, tourism is still predominant in the Reno area. Clearly, there is much life and property at stake here. In 1955 a flood caused an estimated $1.68 million in damage to this area. The Board of Engineers predicted that if this flood were to recur today it would create $277 million worth of damage and destruction!

The Truckee River is also a significant environmental and recreation resource. Six historic bridges span its waters. The river supports 28 fish species and trout fishing is a popular recreation activity. The Truckee River corridor is one of the principal areas of riparian vegetation in Nevada, providing rest and refuge to a wide assortment of wildlife species. The area's growing population increasingly seeks outdoor recreation experiences in and around the river.

I am not yet familiar with the other projects contemplated in the legislation before this Subcommittee, so I am not able at this point to address the legislation in its entirety. However, I have highlighted my support of the Truckee Meadows project by introducing S. 2169, the Truckee Meadows Flood Control Act of 1988. This legislation would, like S. 2100 and S. 2101, authorize the Secretary of the Army to construct a flood control project in the Truckee Meadows area in accordance with the plans of, and subject to the conditions recommended by the Chief of Engineers.

The Department of the Army's recommended plan would provide protection against disasters as severe as a 100-year frequency flood event on the Truckee River within the Reno/Sparks-Truckee Meadows area. Average annual flood damages would be reduced by about 41 percent. The plan would provide a substantial number of additional days of general recreation and fishing.

The Truckee Meadows project is long overdue and its beneficiaries are almost innumerable. I therefore very much hope that the Committee will be able to take prompt and favorable action to authorize this project.

Once again, I appreciate the opportunity to make my view known to the Subcommittee. Thank you very much, Mr. Chairman.

Senator **Burdick**. Mr. Stokley, you may proceed.

STATEMENT OF DONALD L. STOKLEY, AMERICAN PUBLIC POWER ASSOCIATION

Mr. **Stokley**. Thank you, Mr. Chairman.

I do have written comments. I will summarize those.

Senator **Burdick**. They will be received.

Mr. **Stokley**. Thank you.

Mr. Chairman and members of the subcommittee, thank you for this opportunity to testify today on the need for public participation in the operational decision-making process of the U.S. Army Corps of Engineers. My name is Donald L. Stokley; I am President and General Manager of the Municipal Electric Authority of Georgia. MEAG is a joint action agency serving the bulk power needs of 48 locally-controlled public power systems in Georgia. I am testifying today on behalf of MEAG and the American Public Power Association.

APPA is the national service organization representing more than 1,750 community-owned public power systems.

Public power systems and rural electric cooperatives are provided, under law, a first right to purchase power generated at Federal multi-purpose water projects, including 73 projects constructed and operated by the U.S. Army Corps of Engineers. These facilities were authorized by Congress to meet specific project purposes, including flood control, navigation, water supply, power production, and recreation.

From time to time various project interests have approached the Corps requesting that a project be operated differently in order to protect or promote that interest. Frequently the change in project operation would conflict with the Congressional authorization and would jeopardize the interests of the other project beneficiaries. In a number of instances with which I am familiar the Corps has made these changes or attempted to make these changes behind closed doors. It is unclear whether other project participants and the general public were excluded intentionally or unintentionally, but my concern is impact, not motive. Project participants should not be forced to rely on luck, third party notification, or their own initiative to learn of major changes in project operation. Good government requires an open, public process. However, absent a legislative directive, it appears likely that the Corps will be free to make operational decisions in a vacuum without the benefit of public participation or public accountability.

APPA believes that the Corps should operate within the standards of the Administrative Procedures Act in order to provide necessary accountability. Such a legislative solution will aid all parties interested in project operation. Balancing the interests of competing project uses is a difficult task. I believe this difficulty is compounded when the effort is attempted without the benefit of public participation and when affected project participants are excluded from the process.

Providing the opportunity of public notice and comment along the lines of the draft legislation attached to my written testimony will go a long way toward ensuring responsible decision-making by the U.S. Army Corps of Engineers. I urge the subcommittee to consider incorporating this necessary due process legislation in the pending water resources development bill.

Thank you for this opportunity, and I would be happy to answer any questions.

Senator BURDICK. Thank you very much.

Our next witnesses will be a panel composed of Mr. Nicholas J. Melas, President, Chicago Metropolitan Sanitary District; Mr. Kenneth L. Edwards, Riverside County Flood Control and Sanitary District; and Gary Gagnon, Milwaukee Metropolitan Sewer District.

Proceed as you wish.

STATEMENT OF NICHOLAS J. MELAS, PRESIDENT, CHICAGO METROPOLITAN SANITARY DISTRICT

Mr. MELAS. Good morning, Mr. Chairman. It's nice to see you again, Senator, particularly on this lovely St. Patrick's Day.

In deference to the time constraints I am going to brief the remarks that I have prepared and submit the complete written text.

I am very delighted for the opportunity to appear before this distinguished subcommittee to speak in support of a project which we believe to be a worthy candidate for inclusion in the Water Resources Development Act of 1988. This project is the Chicago Underflow Plan, Final Phase I GDM Report, and it is known as the Thornton and McCook Project.

For many years our area has been ravaged and the population traumatized by flooding which has occurred repeatedly, and almost with predictable regularity. Twice over the past two years the President has declared us a disaster area. The annual damages sustained exceed $140 million.

The channel outlet in our area, the main channel outlet, is the Chicago River which at one time served as a drainage outlet as well as a waste outlet and flowed into Lake Michigan, thus polluting the drinking water. The river was reversed many years ago and the source of our drinking water was protected, but the capacity as a drainage channel has been overtaxed over the years.

To solve this problem the Sanitary District adopted a tunnel and reservoir plan in 1972 as the most cost-effective solution as well as the most environmentally and socially acceptable alternative. To provide an outlet for this new underground river, reservoirs were to be constructed at the end of the tunnel. Fifty miles of tunnels have already been constructed at a cost of $1.2 billion and have been operational since 1985, but the new river has no place to go when it fills up during rain. The Thornton and McCook Project provides the reservoir outlet for the new river and will be emptied after the rain. Without this outlet the local drainage has nowhere to go except by backing up and storing combined storm water and sewage in the homes and in the streets.

The U.S. Army Corps of Engineers has published its findings and recommendations of the Chicago Underflow Plan in its report of December, 1986. The Thornton and McCook Project will provide storage capacity. The total benefits of this project are almost twice the total cost. The benefit-to-cost ratio works out to 1.9 to 1.

The Governor of Illinois has endorsed the project and urges implementation. Indeed, we have been working with Senator Alan Dixon, Senator Paul Simon, Congressman Dan Rostenkowski, Congressman Henry Hyde, Congressman Bill Lipinski, and really, all of the members of our Congressional delegation, who are strongly in support of this project.

We and the residents of our area are more than willing to make our contribution to solve these problems. Of the total $410 million cost, $100 million should be the minimum of the local contribution. We are fully prepared to meet or exceed the local cost-sharing requirements under the Water Resources Act.

Thank you very much and if there are any questions, I'll be happy to answer them.

Senator **Burdick**. Thank you.

STATEMENT OF KENNETH L. EDWARDS, CHIEF ENGINEER, RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, CALIFORNIA, ACCOMPANIED BY PETER LYONS, ASSISTANT COUNTY COUNSEL, RIVERSIDE COUNTY, CA

Mr. **Edwards**. Mr. Chairman and members of the committee, I am Kenneth Edwards, Chief Engineer of the Riverside County

Flood Control and Water Conservation District. With me today is Peter Lyons, Assistant County Counsel with Riverside County.

We are here representing all of the sponsors of the Santa Ana River Mainstem Project, which includes Orange, Riverside, and San Bernardino Counties, and a population impacted by the project of about three million people.

I want to first thank this committee for the work you did in bringing about the Water Resources Development Act of 1986. The Santa Ana River sponsors fully supported that bill and concur in the cost-sharing provisions in the water resources project program.

With regards to the Santa Ana River project, with a total cost of $1.1 billion, the local sponsors will be providing about $300 million of the cost.

In working with the U.S. Army Corps of Engineers in preparing the local cooperation agreement we have encountered two problem areas that do not seem solvable through the administrative decision process. These two problems deal with credit for in-kind construction and Constitutional limitations on local government appropriations and spending.

In regard to the in-kind construction credit, Section 913 of the law limits the maximum allowable credit to $3 million. Orange County Flood Control District has had to proceed with two critically-needed reaches of levee improvements along the Santa Ana River channel at a cost of $2.9 million. The design of these levees was compatible with the Corps design, and the Corps reviewed the plans.

Orange County will be proceeding soon on the reconstruction of several highway bridges which, of course, are a local cost, but in some cases it will be necessary to do some main channel work to make the bridges fit. This would result in Orange County not getting credit for that work because the existing credits are at the maximum allowable level. It also prevents Riverside and San Bernardino Counties from doing any in-kind work.

Because of the size and cost of the Santa Ana project construction will be spread out over 12 years or more. We believe that an increase in the limit is appropriate. We are requesting that the language in the statute be revised to provide for credit not to exceed $3 million or 1 percent of the total project cost, whichever is greater.

In the case of the Santa Ana River project this credit could reach $11 million, but it still represents a very small portion of the total project cost. This does not cost the Federal Government any more funding because the sponsors still must pay—or provide—5 percent of the total project construction cost.

The other problem deals with Constitutional appropriation or spending limitations. Section 912(a)(2) of the law provides that the local cooperation agreement may reflect that it does not obligate future State legislative appropriations for such performance and payment which would be inconsistent with State Constitutional or statutory limitations.

The Corps advises that this section applies only to the State legislature. However, local agencies in California are bound by similar Constitutional provisions. We are asking that Section 912(a)(2) be amended to include a local body politic in that provision. We are not asking to avoid our obligation but to merely recognize those limits in the local cooperation agreement setting forth the payment provisions.

With respect to spending limitations, they are set July 1st every year. If we are at our spending limit and if for some reason bids or costs cause the local share for that given year to exceed those limits, we would be unable to transfer the additional funds at that time to meet the terms of the agreement, and thus be considered in default.

This statutory provision will allow the project to continue, with the additional payments to be deferred to the following fiscal year.

Mr. Lyons will explain to you how the California Constitution limits local government appropriations and spending.

We have submitted a written statement for the record, and I would like to say that in what we originally submitted our word processor dropped a line off of page 3. We have submitted a revised page for the record.

We appreciate the opportunity to present these matters and we will be happy to answer any questions after Mr. Lyons finishes. Thank you, sir.

Mr. Lyons. Mr. Chairman, my comments relate, then, to the proscriptions contained in the California Constitution.

First is the obligation of future appropriations and second is the limitation of annual appropriations.

With regard to the first one, both the State legislature and the governing bodies for the local entities within the State of California are prohibited by our State Constitution from obligating appropriations to meet any anticipated expenditures that go beyond the fiscal year in which the appropriations are made. Stated otherwise, no appropriations may be made for future fiscal years, and this applies equally to local entities such as counties and flood control districts as well as the State of California.

Now, the statute as it presently reads in the act recognizes that State appropriations may not be so obligated, but not local appropriations. Accordingly, it would be our recommendation that this statute be amended simply to provide the locals with the same relief in light of the broad application of our State Constitutional proscription.

As to the other proscription, the California Constitution restricts the total annual appropriations of the State and any local governmental entity to the appropriations limit for the prior year, adjusted only for changes in cost of living and population. Appropriation limits relate to the expenditure of monies from the governmental entities tax sources and from all revenues allocated to the entity by the State and Federal Governments. Appropriation limits may not be exceeded without the approval of the electorate within a given governmental entity's boundaries.

There are no provisions, however, in the act which recognize—or for that matter, contemplate—this limitation. It is our recommendation, therefore, that the act be amended so that local and State entities may not be obligated in excess of their authority as provided in our State Constitution. This amendment can be accomplished simply by changing and adding some language in the same statute which I have previously referred to about future appropriations, and more specifically as set forth in our written statement previously submitted to your committee.

That concludes my comments, Mr. Chairman. Thank you.

Senator **Burdick**. Thank you.

Mr. Gagnon?

STATEMENT OF GARY GAGNON, MILWAUKEE METROPOLITAN SEWERAGE DISTRICT, MILWAUKEE, WI

Mr. **Gagnon**. Good morning, Mr. Chairman. My name is Gary Gagnon, Civil Project Engineer from the Milwaukee Metropolitan Sewerage District, representing Patrick Marchese, Executive Director of the District.

Major portions of the urbanized area served by the Milwaukee Metropolitan Sewerage District are subject to severe flooding problems. The District has found itself in the position of being unable to deal with the magnitude of flooding problems which require timely attention.

What has raised the profile of the problem and has caused the threat to public safety and health has been the particularly severe flooding problems which have occurred in 1986 and again in 1987 in all five of the major watersheds comprising the Milwaukee Metropolitan Sewerage District. The worst of them occurred on August 6th, 1986, and included one fatality attributed to the flood. The total flood damages from this storm were estimated at $6 million by the Federal Emergency Management Administration.

The five watersheds making up the Milwaukee area are the Milwaukee River, the Menomonee River, Root River, Kinnickinnic River, and Oak Creek watersheds. The District is currently working with the U.S. Army Corps of Engineers' Detroit District Office to address the Kinnickinnic River watershed problem via the Corps' Section 205 small projects authority. However, the flooding problems and the projects necessary to solve those in the other watersheds will require more intensive technical and financial commitments than are available from that program or economically viable on a local level.

Among the most severe and costly to solve flooding problems have occurred in the Lincoln Creek subwatershed of the Milwaukee River watershed. This area includes approximately 1,600 residences which are subject to flooding from the 100-year recurrence interval flood event. However, the reality is that most of this area experiences flooding during events of much less severity than the 100-year flood.

The projects required to abate this flooding will involve major channel modifications to approximately 6.7 miles of Lincoln Creek including dredging, channel deepening and widening, concrete lining, and construction of dikes and floodwalls with attendant stormwater pumping facilities. The estimated cost of the project is in excess of $30 million.

Although it has not experienced the severe flooding problems of other watersheds, the Root River watershed has the potential for major flooding as well. The last major flooding in this watershed occurred in 1974. Fortunately, the most intense storms which have happened in recent years have not stricken the entire watershed.

Abatement of the flooding problems will require purchase and physical removal of up to 60 homes which are in the Root River floodplain. Removal of these homes will enable channelization to occur in upstream areas which cannot be done until the homes are out of the way. The cost for removal of the homes is expected to exceed $9 million. While cost for channelization to eliminate the flooding is still being developed, it is believed that it may run as high as $10 million more.

The flood control needs in the Menomonee River watershed will be reevaluated during the District's continuing flood control planning activities later this year. There are nearly 400 homes in this floodplain. Solution of the flooding problem is expected to include removal of the homes, structure of floodproofing, and channelization. Current estimates for only the channelization portion of the work is approximately $12 million. Structure floodproofing and removal may entail as much as another $10 million expenditure.

In addition, we have incurred flood damage along the Oak Creek, although to a lesser magnitude than the other watersheds which I have described.

Although the Sewerage District has taken steps to reduce the flood hazards to the communities due to the recent back-to-back storm events, our efforts are no match for the magnitude of the problem. The total expenditure required in the four watersheds will exceed $70 million.

In light of the severe damages that the Milwaukee area has incurred recently we are respectfully requesting that the subcommittee include in its pending water resources authorization bill a study authority for the U.S. Army Corps of Engineers to begin a thorough investigation of the flood control problems in the Milwaukee area. Particularly, we are requesting that the Corps be provided study authority to investigate the flooding problems in the following key watersheds in Milwaukee: the Milwaukee River, the Root River, and Oak Creek. In addition, although we are facing problems along the Menomonee River, we understand there is an existing study authority which may be utilized to look at this problem. We are requesting that this authority be reopened to allow the Corps to assess our problems in this watershed, as well.

I would like to point out here that a prior Milwaukee River study authority had been deauthorized in accordance with Section 710 of Public Law 99-662. However, due to the recent flood events and flood damages incurred in the Milwaukee area, we are requesting that the authority be given to the Corps to reexamine the current situation to determine whether there is a Federal interest.

We understand that the Corps' first step in reviewing the problem area, assuming study authority is provided, is to conduct a reconnaissance study and then, if warranted, a feasibility study would be pursued, which would be cost-shared by the District. We understand our obligations as a local sponsor for a flood control project under Public Law 99-662, and we stand ready to face up to these requirements.

Again, I thank you for the opportunity to present our testimony and I stand ready to answer any questions you may have.

Senator BURDICK. I have no questions of this panel. Thank you very much.

Our next panel is Ms. Virginia Valentine, Clark County, Nevada Regional Flood Control District; Mr. Dennis McDuffie, Rancho Palos Verdes, California; Judith Meister, Santa Monica, California; and Councilman Kay Horrell, City of Redondo Beach, California.

STATEMENT OF VIRGINIA BAX-VALENTINE, CHIEF ENGINEER AND GENERAL MANAGER, CLARK COUNTY, NEVADA REGIONAL FLOOD CONTROL DISTRICT

Ms. VIRGINIA BAX-VALENTINE. Thank you, Mr. Chairman. I am Virginia Bax-Valentine, Chief Engineer and General Manager of the Clark County, Nevada Regional Flood Control District. It is a pleasure to testify before your committee today on behalf of my Board of Directors for the District and Chairman Bruce Woodbury.

Last year Congress authorized a flood control project for the Las Vegas Valley and appropriated initial funding for a feasibility study.

Over the past several years we in Southern Nevada have sustained millions of dollars in flood damage to public and private property. Flooding has interfered with public transportation, emergency services such as ambulance and fire protection, and has even taken lives. National media coverage of our flood events tremendously damages our ability to attract tourism, conventions, and new businesses.

In 1984 alone, Clark County suffered over $10 million in damages to public property alone. Private property damages were estimated to be several times that. Seven people lost their lives in the floods of 1984.

The county and the city have worked diligently with limited resources to try to solve our flood problems independently. In 1985, the Nevada State Legislature created the Clark County Regional Flood Control District to address the problem comprehensively. We have developed a Regional Master Plan to provide flood protection to all the residents of Clark County through the implementation of a comprehensive construction and regulatory program.

In September of 1986 the voters approved a .0025 percent sales tax increase to fund the construction of the Master Plan Flood Control facilities, to provide the local match to the U.S. Army Corps of Engineers and to implement a regulatory program to reduce future flood damages. The Flood Control Master Plan identifies about $835 million worth of construction projects. Anticipated sales tax revenues to the District are estimated to be about $12 million annually. With construction needs so much greater than our funding ability, the need for Federal participation is critical to the timely implementation of the Master Plan. Without Federal assistance many residents will go unprotected, literally for decades.

The Clark County Regional Flood Control District has already spent some $13 million and has begun construction of dams, dikes, and channels to prevent continued destruction. In accordance with H.R. 6, known as Public Law 99-662, the Clark County Regional Flood Control District is very willing to cost-share but would appreciate any language which this committee can see fit to include in the authorization legislation before it to allow credit for funds already spent which would be eligible for inclusion in non-Federal sponsored costs to be so included in the project.

Again, Mr. Chairman, the people of Las Vegas have taxed themselves with an assessment which also would provide funds to finance the non-Federal or local share of our project. We believe this commitment by our local jurisdiction is strong evidence of our ability to sponsor a Federal project. I know that Senator Hecht and Senator Reid are keenly aware of the public safety motives which have driven the strong commitment and public support of the people of Clark County. We therefore appreciate supporting language in the measure now before you.

Thank you.

Senator **Burdick**. The next witness?

STATEMENT OF DENNIS McDUFFIE, CITY MANAGER, RANCHO PALOS VERDES, CA

Mr. **McDuffie**. Yes, Mr. Chairman. My name is Dennis McDuffie. I am the City Manager of Rancho Palos Verdes, California.

The city of Rancho Palos Verdes has under its jurisdiction the largest urban landslide in the United States. Since 1956, approximately 170 homes have been destroyed so far in this very heavily-populated area of Southern California. We have spent over $4 million up to now to successfully stabilize the upper reaches of the landslide.

Congress has authorized and appropriated funds for a U.S. Army Corps of Engineers reconnaissance study to seek stabilization of the remaining coastline portion of the slide where the earth is falling into the sea, destroying over 70 percent of the marine habitat of that part of the California coastline.

Our city is prepared to cost-share the feasibility study and eventual construction phase of the project. However, we are economically unable to do so unless the very favorable and extensive environmental benefits which will result from completion of the project can be used as mitigation for any one of several other adjoining projects which need such benefits and are entirely capable of paying the sponsors of the Portuguese Bend Landslide for that mitigation.

The adjoining project immediately to the south is the 2020 Project, the largest port project in the United States which, as the committee knows, desperately needs such mitigation. The funds which would result from the sale of this mitigation, along with other resources, would enable our jurisdiction to participate as a non-Federal partner in the eventual construction, and we would like at this time to ask the committee to provide what language might be necessary to enable the Secretary of the Army to encourage mitigation of this type, which does not include wetlands, to be made available. As a matter of fact, Mr. Chairman, we estimate that the environmental benefits along the coastline which would result from our project would be far and away more extensive than any wetlands which would involve the same acreage.

Mr. Chairman, we would like to provide the committee with a recent study which would substantiate the economic benefits resulting from the completion of the project and other materials which might help provide inclusion of enabling language in the legislation which is now before this committee. Senator Cranston and Senator Wilson are well aware of the efforts which we have provided in order to do our part to contain this disaster and I can assure you, Mr. Chairman and members of this committee, that your colleagues in the House Public Works and Transportation Committee are keenly aware of the need to provide what extended authorizations may be necessary so that the Federal Government can match the economic and technical contributions which our city has provided in this matter.

We are indeed honored to have the opportunity to appear before your distinguished committee this afternoon, Mr. Chairman. If there are any questions, I would be glad to answer them.

Senator BURDICK. Thank you.

Who is next?

STATEMENT OF JUDITH MEISTER, SANTA MONICA, CA

Ms. MEISTER. Mr. Chairman, I am Judith Meister of the city of Santa Monica. Mayor James Conn was unavoidably detained in New York and he would be most appreciative if I might represent him before the committee this morning.

As you know, Mr. Chairman, the beach at Santa Monica and the Santa Monica Pier are undoubtedly the most heavily-used stretch of oceanfront in the United States. It is world-famous. For years, the Santa Monica breakwater protected the pier and beach, but in the storms of 1982–1983 the breakwater was damaged beyond any usefulness and now stands partially submerged as a hazard to navigation and as a menace to public safety.

The Federal Emergency Management Agency awarded the city of Santa Monica several million dollars to reconstruct the damaged pier and the breakwater shortly after the 1983 storm. Subsequent to that award H.R. 6, which is the product of your fine committee, authorized a reconnaissance study for reconstruction of the breakwater. On July 14th of last year, representatives of FEMA met with the staff of the House Public Works and Transportation Committee and representatives of the city of Santa Monica. FEMA assured the House committee that it was certainly possible to turn over those funds which were apportioned for reconstruction of the breakwater to the Secretary of the Army for use in any authorized Federal project which might be effected by the U.S. Army Corps of Engineers as a result of a reconnaissance study, feasibility study, and final project approval by the Chief of Engineers. Since those funds were designated for the city of Santa Monica as a local governmental jurisdiction, it is obvious that the funds turned over to the Secretary of the Army should be applied against the non-Federal share of the eventual Federal project.

The city is eager to implement the new cost-sharing provision of Public Law 99–662.

Mr. Chairman, the Mayor and City Council of Santa Monica would be most appreciative if this committee could include language in the authorization legislation before you which would formally direct FEMA funds to be included as a part of the non-Federal share of the project once it is authorized.

Mr. Chairman, I am sure that both Senator Alan Cranston and Senator Pete Wilson would be very happy to support this request of the city, since both Senators have contributed substantial assistance toward eventual reconstruction of the Santa Monica breakwater. We are most appreciative of their continued interest.

On behalf of Santa Monica I thank you, Mr. Chairman and members of the committee, for your continued assistance.

Senator **BURDICK**. Thank you.

Do you have a statement?

STATEMENT OF KAY HORRELL, MAYOR PRO TEMPORE, CITY OF REDONDO BEACH, CA

Ms. **HORRELL**. Thank you, sir.

Mr. Chairman, my name is Kay Horrell and I am Mayor Pro Tem of Redondo Beach, California. I represent the district that includes the King Harbor area.

On behalf of the city of Redondo Beach I thank the committee for the opportunity to testify in support of legislation to amend the Water Resources Development Act of 1986. We are particularly interested in section 809 of that act which authorizes the U.S. Army Corps of Engineers to dredge and maintain King Harbor, raise our breakwater to 22 feet, and to plan and design a project to raise the breakwater higher than 22 feet.

The Corps is nearing completion of the feasibility study and expects to commence preconstruction engineering and design work later this year. We are at a critical point for this project, especially in light of the January storm that severely damaged the north breakwater and many businesses and boats in the harbor. More than 600 jobs are temporarily or permanently lost. We feel deep personal hurt because of the loss of these jobs to these affected employees.

The storm has brought to light certain issues that must be resolved before the harbor can safely be restored. Since 1980, storm damage in King Harbor has surpassed $25 million, over $17 million of which was sustained in the January, 1988 storm. Although a Federal disaster was declared for public damages, no Federal disaster assistance will be made available for private losses. Many businesses within the harbor were damaged. Some of the largest were completely destroyed. The damage is directly due—directly due—to the inadequate breakwater. The city itself is losing more than $150,000 per month in revenue from these closed businesses, some of which will not reopen for quite some time, possibly years.

The city's Harbor Reserve Fund, which had been prudently set aside to meet our cost-sharing requirements, is now depleted because of the storm. And each storm threatens to only compound the damage. As such, we truly need and truly would welcome the committee's support in expediting this project, considering the emergency conditions existing in our harbor.

The city recommends that Section 809 be amended to authorize the Corps to construct the breakwaters higher than 22 feet subject to a favorable report by the Chief of Engineers and approval by the Secretary of the Army. The 1986 act only authorized planning and design work for this additional modification. In light of our January experience and the fact that King Harbor has been frequently damaged by even minor storms, we believe it is wise to authorize the additional work now.

In addition, the Corps report recommends that our south breakwater be extended by 300 feet. The language of Section 309 does not specifically reference such an extension, but rather authorizes the Secretary to "construct the breakwaters to a height of 22 feet."

We recommend that the section be amended to remove any doubt that the extension is authorized and that it can be constructed.

Mr. Chairman, the city of Redondo Beach would like to submit to the committee within two weeks specific amendment language which could be inserted into the committee's bill at the appropriate place. Because we are currently working with the Corps to better understand the options immediately available to us, we are not prepared to submit an amendment today.

We sincerely thank you for your attention and for your consideration in this matter. Thank you.

Senator **Burdick**. Thank you.

In order to provide sufficient time for there to be additional submissions of material and for members of the committee to submit follow-up questions, the record will remain open for 10 days.

This hearing stands adjourned.

[Whereupon, at 12:10 p.m., the subcommittee was adjourned, to reconvene at the call of the Chair.]

[Statements submitted for the record follow:]

WRITTEN TESTIMONY

Presented By:

R. Barry Palmer

Executive Director of DINAMO,

The Association for the Development of Inland Navigation in

America's Ohio Valley

Presented to:

United States Senate

Environment and Public Works Subcommittee

on Water Resources, Transportation

and Infrastructure

Presented on:

March 17, 1988

WITNESSES

(in alphabetical order)

George E. Evans, Jr., Secretary, Kentucky Energy Cabinet
Commonwealth of Kentucky

Mark Gabor, United Mine Workers of America
National Legislative Representative

Gary P. LaGrange, Executive Director, West St. Mary Parish
Port, Harbor and Terminal District (Louisiana)

Charles Lehman, Vice President of Public Affairs,
American Commercial Barge Line

R. Barry Palmer, Executive Director, DINAMO
The Association for the Development of Inland Navigation
in America's Ohio Valley

Donald Salsbury, Vice President and General Manager,
Mid-South Towing

Edward Sullivan, Legislative Council, Peabody Holding Company

Good morning, Mr. Chairman, and distinguished members of this United States Senate Environment and Public Works Subcommittee on Water Resources, Transportation and Infrastructure.

I am R. Barry Palmer, Executive Director, of The Association for the Development of Inland Navigation in America's Ohio Valley, more commonly called by its acronym, DINAMO. DINAMO is a multi-state, membership-based coalition of business and industry, labor, and state government leaders, whose only purpose is to expedite the modernization of the locks and dams infrastructure on the Ohio River System. DINAMO was launched by the Governors of Pennsylvania, Ohio, West Virginia, and Kentucky in March of 1981 to promote the need for lock and dam modernization in the Ohio Valley and to persuade public policymakers to take corrective steps to rebuild this part of our nation's infrastructure.

Today, Mr. Chairman, we bring before you and your Subcommittee a panel of interested parties — representing business and industry, labor, and state government — from throughout the Ohio Valley and the nation to urge authorization of the Olmsted Locks and Dam, Ohio River, Illinois/Kentucky, to replace Locks and Dams 52 and 53. The present structures are 60 years old, deteriorating, and obsolete by modern standards. Commodities valued at $8 billion transit this portion of the Ohio River, impacting an enormous number of the jobs and commerce of the Ohio Valley and the nation.

The Report of the Chief of Engineers for this Olmsted Locks and Dam demonstrates the support of the Ohio Valley Governors, United States Senators and Representatives, as well as private sector interests affected by the project. We support the 50% private sector funding from revenues gathering in the Inland Waterways Trust Fund.

Enclosed is a statement of issues and support related to the Olmsted Locks and Dam, which outline in greater detail the importance of this project to the Ohio Valley and the nation. Also enclosed is a list of witnesses who will appear on the DINAMO panel this morning. We thank you for your support and for the opportunity to appear before you today.

DINAMO STATEMENT OF ISSUES AND SUPPORT RELATED TO THE OLMSTED LOCK AND DAM, IL/KY, OHIO RIVER REPLACING LOCKS AND DAM 52 AND 53

Area of Concern: The reach of the Ohio River from the mouth near Cairo, Illinois, to the confluence of the Cumberland River upstream of Paducah, Kentucky, is one of most strategic portions of the inland waterway system. This reach connects the Mississippi River navigation system with the entire Ohio River navigation system, including the Tennessee and Cumberland Rivers. This reach of the Ohio River is approximately 61 miles in length; located within this portion of the Ohio River are Locks and Dams 52 and 53.

Locks and Dams 52 and 53 are the two remaining structures completed in 1929 as part of the original Ohio River low-lift locks and dams cannelization program. Each of these locks and dams include the original 110 x 600 foot lock chamber, a temporary 110 x 1,200 foot lock chamber, a moveable dam for passage of waterborne traffic during periods of moderate to high flow and pool level control, and fixed weirs. These structures allow passage of traffic without lockage approximately 60 percent of the year (on an annual basis) at Locks and Dam 52 and about 90 percent of the year (again on an annual basis) at Locks and Dam 53.

Traffic levels at these locks, in tonnage per year, are among the highest in the inland waterway system. During 1987 tonnage of all commodities passing through the Locks and Dam 52 project totalled 87.3 million tons. To characterize the traffic passing though this project in 1986, Attachments 1-3 provide a listing of various commodities and their respective tonnages.

Replacement of Locks and Dams 52 and 53 is Needed Immediately: This portion of the Ohio River is the "hub" of the inland waterway system. Reliable navigation through this reach is a paramount concern for the nation and the Ohio Valley. Primary navigation-related problems have been identified for Locks and Dams 52 and 53.

First, projected increases in waterway traffic demands and the limited capacities of the existing locks already are creating long delays for towboats transitting this portion of the Ohio River. Estimates of growth in traffic tonnage for Locks and Dam 52 by the Corps of Engineers have been fairly accurate. The Louisville District had anticipated tonnages through this project in 1980, 1985, and 1987 of 68.4, 78.2, and 82.4 million tons of commodities, respectively. Actual tons shipped through this project compare with 65.4, 79.1, and 87.3 million tons for the respective years.

During periods when lockage is required at Locks and Dam 52, individual tows average almost 6 hours of delay; occasionally tows have experienced delays of 20 to 30 hours or more. Based on Corps of Engineers data to monitor lockage times, tows passing through the Locks and Dam 52 facility in 1987 were delayed a cumulative total of almost 28,000 hours. As traffic levels continue to increase in this portion of the Ohio River, this constraint will only become worse. The Corps of Engineers is forecasting average delays of 20 hours by the year 2000.

Secondly, other major problems at Locks and Dams 52 and 53 include project deterioration, structural stability, and operational safety. During periods of low river, a moveable dam is raised by men on a wicket boat. Wickets are 10 feet wide sections, and 400 are required at Dam 52. The metal brackets supporting the wickets in the dam floor are corroding. The significant concrete portions of the project were built without reinforcing steel, relying on mass for stability. The beartrap at Dam 53 is showing large cracks in the wall, requiring extensive maintenance procedures to stabilize its condition. In addition, the substructure of the locks and dams, consisting of wooden piles driven into the riverbed, are overstressed, exceeding current design engineering standards by 50% to 100% during normal operating conditions. In addition to normal loads, Locks and Dams 52 and 53, located near the New Madrid Fault Line, the site of a minor tremor in 1987, are highly susceptible to earthquake induced damage.

The national economic importance of reliable navigation facilities at this portion of the river system dictates construction of a new lock and dam facility to replace Locks and Dams 52 and 53:

In 1986, for example, 85,668,915 million tons of commerce transitted Locks 52. These commodities had a value in excess of $8 billion. Of the tonnage transitting Locks 52, 41.3 million tons, or 48%, was coal. About one-third of this tonnage terminated in Louisiana and Florida. The second largest commodity volume transitting Locks 52 in 1986 was grain at 10,036,510 tons. There are generally two patterns for grain movements integral to Locks 52 as they relate to the Ohio River system. First, Indiana, Kentucky, Ohio, and Illinois exports principally corn, soybeans, and wheat to the Ports of Louisiana. Secondly, large movements of grain are imported from the Upper Mississippi River via the Ohio River system to northern Alabama and Tennessee. The third largest volume of commodities moving through Locks 52 in 1986 was chemical products at 9,990,014 tons. Of this amount, nearly 7.8 million tons originated in Louisiana and Texas, while 7.4 million tons terminated in Ohio, Kentucky, Indiana, and West Virginia.

Status of Pre-authorization Activities: The Louisville District, U S Army Corps of Engineers, has reviewed a number of alternatives to address these navigation problems and recommended a new locks and dam facility to replace Locks and Dams 52 and 53. The location best suited for this structure is approximately 1.8 miles downstream from the present location of Locks and Dam 53 near the community of Olmsted, Illinois. This site is about 44 miles below Paducah, Kentucky, and about 27 miles above the confluence of the Ohio River with the Mississippi River. Draft and Final Environmental Impact Statements were also completed and accompanied the feasibility reports during the review stages.

This new facility would consist of twin 110 x 1,200 foot lock chambers and a dam that would have submersible gates to allow tow passage without lockage during higher flow conditions. Lockage would not be required about 58 percent of the time on an annual basis. This recommended plan has been reviewed at various levels within the Federal government. The project was reviewed by the Board of Engineers for Rivers and harbors and forwarded to the Office of the Chief of Engineers on December 23, 1985. The Chief of Engineers completed review of the recommended plan and sent the project report to the Acting Assistant Secretary of the Army (Civil Works) on August 20, 1986. The Acting Assistant Secretary of the Army (Civil Works) concurred with the recommended plan and forwarded the project report to the Congress on October 26, 1987. The project is included in S. 2100, introduced by Senator Moynihan, Chairman of the Senate Environment and Public Works Subcommittee on Water Resources, transportation and infrastructure, and others on February 26, 1988. The Administration supports the Olmsted Locks and Dam project, as noted in another bill, S 2101, introduced by Senator Stafford by request of the Administration, also on February 26, 1988.

The recommended plan is presently estimated to cost $775,000,000, based on 1987 costs, and requires a construction time of about 8 years. The labor costs are estimated to be about 36% of total project costs, or $280 million, pumped into the local economy directly over the construction life of the project.

Financing The Olmsted Project: The Water Resources Development Act of 1986 scheduled increases in the tax on diesel fuel consumed by towboats operating on America's inland navigation system. The tax, currently at a level of 10 cents per gallon, would increase to 20 cents per gallon by 1995. These taxes currently are gathering in the Inland Waterways Trust Fund and represent the private sector contribution to finance a lock and dam modernization project. In addition, the Water Resources Development Act of 1986 enacted new cost-sharing provisions, applicable to the seven authorized lock and dam modernization projects in the Water Resources Development act of 1986, whereby 50 percent of the cost of a lock and dam modernization project is financed from the Inland Waterways Trust Fund, and 50 percent of the cost is financed from general treasury monies. DINAMO and waterways-related interests agreed to accept a gradual increase in user charges and the aforementioned cost sharing provisions in the hope for and trust in an orderly inland navigation modernization program for the nation. We support the same 50 percent private sector cost-sharing provisions for the Olmsted Lock and Dam project.

ATTACHMENT 1

LOCKS AND DAM 52

ALL TRAFFIC/ALL COMMODITIES-1986 TONNAGE

STATE	IMPORT TO	EXPORT FROM
PA	2,282,913	1,907,049
WV	2,303,712	6,787,905
OH	5.865,621	5,096,333
IN	6,492,597	8,314,361
IL	5,968,887	12,379,306
KY	8,970,012	26,911,185
TN	6,103,548	1,609,610
MO	1,386,066	1,536,982
TX	1,139,565	4,106,338
LA	27,698,380	13,219,411
MS	3,067,987	885,083
AL	5,435,545	977,433
AR	913,284	24,531
FL	4,531,303	11,298
OTHER STATES	3,509,495	902,090
TOTAL	85,668,915	85,668,915

ATTACHMENT 2

LOCKS AND DAM 52

1986 TONNAGE AND VALUE BY COMMODITY

COMMODITY	TONNAGE	VALUE WATERBORNE COMMERCE*
COAL	41,345,792	1,406
GRAIN	10,036,510	913
CHEMICALS	9,990,014	2,038
AGGREGATES	6,591,658	63
IRON, STEEL	5,061,571	2,035
PETROLEUM	4,911,439	619
ORES	2,876,707	239
CRUDE PETROLEUM	54,378	5
OTHER COMMODITIES	4,800,936	710
TOTAL	85,668,915	8,028

* in $millions, based on October 1986 price levels on weighted distribution of Ohio River Basin Waterborne Commerce for each commodity group.

ATTACHMENT 3(A)

LOCKS AND DAM 52

TONNAGE BY COMMODITY-1986

COAL

	EXPORT FROM	IMPORT TO
KY	17,435,546	2,723,484
WV	6,141,622	1,625
IL	8,656,952	4,761,831
IN	5,296,781	4,078,380
OH	2,293,244	1,439
PA	1,130,846	
MO	1,439	959,806
LA	54,052	14,929,846
MS		1,936,984
FL		4,475,614
AL	10,249	2,797,358
TN	323,630	1,447,695
OTHER STATES	1,431	3,231,730
TOTAL	41,345,792	41,345,792

ATTACHMENT 3(B)

LOCKS AND DAM 52

TONNAGE BY COMMODITY-1986

GRAIN

	EXPORT FROM	IMPORT TO
IN	2,601,220	140,817
KY	1,881,384	61,441
OH	1,830,890	23,884
IL	1,341,373	30,614
TN	452,264	1,148,475
AL	298,989	1,512,376
MO	201,623	
LA	151,654	6,929,007
OTHER STATES	1,277,113	189,896
TOTAL	10,036,510	10,036,510

ATTACHMENT 3(C)

LOCKS AND DAM 52

TONNAGE BY COMMODITY-1986

CHEMICALS

	EXPORT FROM	IMPORT TO
LA	4,598,888	174,023
TX	3,230,570	292,134
IL	499,756	198,193
MO	226,683	147,766
AL	207,325	530,542
WV	186,464	991,913
PA	164,546	555,986
OH	160,690	2,677,431
KY	150,911	2,534,770
IN	68,674	1,202,640
TN	63,278	628,483
OTHER STATES	882,229	56,133
TOTAL	9,990,014	9,990,014

TESTIMONY OF

DAVID H. GAMBREL
DIRECTOR OF TRANSPORTATION
PEABODY DEVELOPMENT COMPANY
AND
EDWARD L. SULLIVAN
LEGISLATIVE COUNSEL
PEABODY HOLDING COMPANY, INC.

BEFORE THE

SUBCOMMITTEE ON
WATER RESOURCES, TRANSPORTATION, AND INFRASTRUCTURE

ENVIRONMENT AND PUBLIC WORKS COMMITTEE
UNITED STATES SENATE

WASHINGTON, D.C.
MARCH 17, 1988

Good Morning Mr. Chairman and Members of the committee. I am David H. Gambrel, Director of Transportation for Peabody Development Company and with me today is Mr. Edward L. Sullivan, Legislative Counsel for Peabody Holding Company, Inc. Peabody Development Company is a part of Peabody Holding's family. Peabody is the largest producer of coal in the United States with operations in 11 states from West Virginia to Wyoming, including both Kentucky and Illinois.

We appear today to voice strong support for full funding for the replacement of Locks and Dams 52 & 53 on the Ohio River near its confluence with the Mississippi. The existing facilities at that location were completed in 1929 and are now out-dated, inefficient and obsolete. The new replacement facility, to be located near Olmsted, Illinois is a much needed improvement in the U.S. inland waterway system. A system which provided the means for transporting 14.3% of all coal shipped by the U.S. coal industry in 1986 (the last year for which figures are available). That translates to 114.7 million tons of coal moving on the U.S. inland waterway system.

The National Coal Association, which has submitted a separate statement in support of the Olmsted Project, has recommended that this project be given a high priority as

Congress begins the authorization process on new, critical river navigational projects. Peabody concurs in that recommendation.

While, as I have stated, 114.7 million tons of all coal shipped by the U.S. coal industry in 1986 moved on the inland waterway system, 41.3 million tons of that coal moved past Lock & Dam 52 itself. Thus, a full 36% of all coal which moved on the inland waterway system in 1986 actually passed through the area where the Olmsted Project is to be sited. One can easily see the importance to the coal industry of a dependable and efficient locking system at such a key location on our navigable river system.

Coal shipped through this area is delivered to customers in Florida, Louisiana, Kentucky, West Virginia, Illinois, Indiana, Ohio, Missouri, Mississippi, Alabama, and Tennessee as well as several other states. It can be said that this key point through which this coal must pass affects the ability of the coal industry to distribute its product to its many customers in these states. For some coal producers, the inland waterway system provides them with the only transportation mode available for their product, without which they could not compete.

On an individual company basis, Peabody and its affiliates shipped over 13 million tons of coal on the inland waterway system in 1987. That's more than 17% of the nearly 70 million tons produced by Peabody and its affiliates in 1987. More specifically, Peabody's Illinois Division shipped 4.8 million tons of coal by water; its Eastern Division (comprised of the states of Ohio and Western Kentucky) shipped 8.1 million tons by water, and the remaining tonnage originated out of our West Virginia Division. Of that 13 million ton total, approximately 6.5 million tons actually passed through the area where the Olmsted project will be sited. For Peabody, the Ohio River and the access which the Olmsted Project will provide to the Mississippi River are of vital importance. It represents the only method to deliver its coal to its customers along the Mississippi River at a competitive price.

Locks and Dams 52 & 53 have served their purpose well they have provided a needed service for nearly 60 years. It is now time to upgrade and improve this navigational facility to a size and condition which is warranted by the heavy usage it has consistently received.

As evidenced by the testimony of this panel, the high volumes of barge traffic which this facility presently handles is unlikely to decrease significantly in the future. Indeed, we are more likely to see modest tonnage increases (at least in the coal industry). The existing facilities are barely able to handle the traffic they now receive, waiting times for locking services often exceed several hours, and without modernization, any increased utilization will only compound problems. The size of the existing Locks is insufficient to accommodate modern tows with jumbo barges and their condition is such that in terms of maintenance costs, their useful life is now at an end.

On behalf of Peabody, I would once again ask that this committee approve full funding for the construction of a modern navigation facility at Olmsted, as called for in the Water Resources Development Act of 1988.

Mr. Sullivan and I would be happy to respond to any questions which you may now have.

MID-SOUTH
TOWING
A TECO TRANSPORT COMPANY

March 14, 1988

Honorable Daniel P. Moynihan
Chairman, Committee on Environment & Public Works
United States Senate
Washington, D.C. 20510-6175

Dear Senator Moynihan:

Thank you for scheduling me to appear before you and the Subcommittee on Water Resources, Transportation and Infrastructure. I will be testifying as part of the DINAMO panel before the subcommittee at the hearing on March 17, 1988, to support the Olmsted Project, replacing Locks and Dams 52 and 53.

Locks and Dams 52 and 53 control the navigation channels on the Lower Ohio River, and I am expressing support and concern for the navigation situation and the replacement of the two deteriorated, and obsolete Locks and Dams with a single facility. The structure would include twin 110 by 1200 foot long locks adjacent to the Illinois bank, a spillway section controlled by tainter gates, a 1120 foot wide navigable pass controlled by drum gates, and a fixed weir extending to the Kentucky bank constructed near the community of Olmsted, Illinois.

We believe that this replacement facility is crucial, necessary and will result in safer, better barge traffic flow through the lower reaches of the Ohio River area. The facility will greatly reduce, if not eliminate, the extensive lock delays we now experience at Locks and Dams 52 and 53. Mid-South Towing Company regularly transports nearly 10 million tons of coal and other products annually through these facilities.

MID-SOUTH TOWING COMPANY
P. O. Drawer 790 Foot of Scott Street Metropolis, Illinois 62960 (618) 524-3100 TWX 910-996-2596
Fiscal Office: 6405 W. Cypress Street P. O. Box 22048 Tampa, Florida 33622-2048

Attached is a summary of the history of Mid-South Towing's association with the Inland Waterways System.

Thanking you for your time and consideration, I remain

Respectfully yours,

Mid-South Towing Company

Donald R. Salsbury
Vice President and General Manager

DS/dsa

Enclosure

BACKGROUND INFORMATION

TECO Transport & Trade Corp.
5405 West Cypress Street
P. O. Box 22048
Tampa, Florida 33622-2048

TECO Transport & Trade Corp. was formed in 1981 to coordinate the operations of TECO Energy, Inc.'s transportation group.

Although the company was reorganized in 1981, its roots reach back to 1899 with the establishment of Tampa Electric Company as a utility serving customers in the Tampa, Florida area. TECO Transport, Tampa Electric, and TECO Coal, which supplies a significant share of the utility's coal needs, are all now subsidiaries of Tampa-based TECO Energy, Inc. (NYSE)

Origins of the Transport Network

In the mid-fifties, when the only fuel used in Florida to generate electricity was oil, Tampa Electric initiated a plan to secure a more economical fuel alternative.

With nuclear power still in its infancy, natural gas unavailable, and coal apparently priced out of the market because of the high rail transportation costs from distant midwestern mines, Tampa Electric's options were limited.

Because of this lack of competition among fuels, purchase agreements with oil suppliers were short term, and costs were generally higher than in other regions. In developing a plan, Tampa Electric's objectives were to stabilize fuel costs via long-term supply contracts, and reduce the cost of oil by introducing a competitive alternative.

The option chosen by Tampa Electric management: Coal, abundant and comparatively low in cost when combined with low-cost water transport.

To implement this idea, supply agreements were negotiated with an Ohio Valley coal supplier, and two waterborne shipping companies were formed: Mid-South Towing Company, a river towboat/barge fleet for moving coal via the inland waterways to the New Orleans area, and Gulfcoast Transit Company, an ocean carrier for shuttling coal from New Orleans across the Gulf of Mexico to Tampa Bay. Electro-Coal Transfer Corp. joined the Tampa Electric's transport group in the mid-sixties; its location on the Mississippi River south of New Orleans provided a convenient storage and transloading point linking the operations of the two marine carriers.

During the next two decades, nuclear power has become a controversial topic, and oil prices have skyrocketed. Both developments have confirmed the widsom of Tampa Electric's decision to use coal as a primary energy source. Coal-fired power generation at Tampa Electric has risen to the 87 percent level, and the coal transportation network established earlier still serves as a primary supply conduit.

Corporate Reorganization Yields New Structure

In 1981, Tampa Electric was reorganized. TECO Energy emerged as the parent of the Tampa utility and of newly formed TECO Transport & Trade Corp.

TECO Transport serves as the administrative and marketing arm of the utility's former transportation subsidiaries. Electro-Coal, Mid-South Towing, and Gulfcoast Transit continue as the coal connection for Tampa Electric. But the growing commercial business of all three companies is receiving added emphasis and visibility under the TECO Transport banner.

Since the early 1980's, the Electric Company coal requirements have steadily grown. During this period Mid-South Towing Company regularly transported nearly 10 million tons of coal and other products annually through the deteriorating and obsolete Locks and Dams 52 and 53 in the lower reaches of the Ohio River.

Mid-South recently opened a regional office and barge fleeting area on the Ohio River at Metropolis, Illinois. The Metropolis facility serves not only as a northern terminus for the barge operation, but provides a means to increase commercial business in the area.

TESTIMONY BEFORE
THE
SENATE SUBCOMMITTEE ON
WATER RESOURCES, TRANSPORTATION, AND INFRASTRUCTURE
REGARDING
S.2100, WATER RESOURCES DEVELOPMENT ACT OF 1988

THURSDAY, MARCH 17, 1988

CHARLES F. LEHMAN
AMERICAN COMMERCIAL BARGE LINE COMPANY
POST OFFICE BOX 610
JEFFERSONVILLE, INDIANA 47130

(812) 288-0553

My name is Charles Lehman. I am Vice President of American Commercial Barge Line Company located in Jeffersonville, Indiana. My Company is in the inland waterway transportation service business and is a part of the CSX Corporation. We operate more than 80 towboats of various sizes and horsepower and approximately 2,000 barges with a total capacity of about 3,000,000 tons of freight. These barges haul both dry cargo such as coal, grain, steel and ores, as well as liquid cargoes such as chemicals and edible oils.

The opportunity to appear before this Subcommittee to testify in favor of the Olmsted Lock and Dam, located at the lower end of the Ohio River system, is greatly appreciated. It is most appropriate that we are testifying before this Subcommittee on Water Resources, Transportation, and Infrastructure. The Olmsted Lock and Dam meets all these criteria. Certainly, it is one of the most important "water resource" projects now being designed. It is part of a "transportation" network tying the entire mid-continent of this country together. Finally, by any definition, it is one of the most significant "infrastructure" undertakings needed, impacting millions of Americans throughout the Ohio and Mississippi Valleys.

This project is vitally important to the inland waterways system. We urge its authorization by Congress, and its construction in a timely fashion. Indeed we, at American Commercial, view it as first in priority of all navigation structures requiring replacement. The Inland Waterways Users Board, authorized by this Committee, has assigned it a "Catagory I" priority, which is for projects the Board felt should be accelerated within existing Corps capabilities or for which Corps capabilities could be increased.

Olmsted Lock and Dam, like Lock and Dam 26 at Alton, Illinois, is the critical structure of an entire navigation reach. Lock and Dam 26 is the gateway to the Upper Mississippi and Illinois Rivers. Without the lock at that juncture, almost 50% of the total U.S. grain that goes to export would be at risk in the marketplace. The same is true of the vital lower end of the Ohio River. If failure occurs at either Locks and Dams 52 or 53, the Ohio River navigation system would be a series of pools with only local commerce taking place. The gateway which Olmsted will serve consists of the Monongahela, Allegheny, Kanawaha, Big

Sandy, Green, Cumberland, Tennessee, and of course, the 981 miles of the Ohio River.

In 1987, Lock and Dam 52 accommodated more than 87 million tons of cargo. This equates to about 60,000 loaded barges, or to put it in another perspective, over a million railroad carloads, or 3,500,000 loaded trucks. Most of the cargo flows to and from the Ohio Valley industrial and agri-business communities would grind to a halt if existing facilities at the lower end of the main stem Ohio were disrupted.

Others have testified about the various commodities moving through the present Lock & Dam 52 and their importance to our economy. It is sufficient to say that not only the states that border the Ohio River will benefit from the Olmsted project, but also all of those States in the connecting valleys.

Presently, more than 3,200 of my Company's (ACBL) barges transit the lower Ohio River area annually. Our delays, when wicket dams at 52 and 53 are up for any length of time, are longer than the six hours averaged by the Corps on an annual basis. For instance, in September, 1987, when required to lock at 52, we averaged 9.0 hours delay per tow. In October, we averaged 11 hours delay per tow transit.

Since the Lower Ohio is the area of greatest tonnage growth on the Ohio system, we expect delay times to exponentially increase, as presently occurs on the Mississippi when the main lock at Lock and Dam 26 is down for repair and the backup starts to build. We believe, if nothing is done, the average waiting time at Locks 52 and 53 in the year 2000, only 12 years away, will be much greater than the 20-hour delay estimated by the Corps. A lock can only handle so much tonnage and accommodate so much space. When the level of cargo and number of barges exceeds the capacity of the structure, delays rapidly mount as tows begin to wait their turn to lock. These delays raise the costs of transportation, therefore, commodities cost more and ultimately the consumer pays more.

The winding chain of our agri-industrial valley is strong as long as the links that hold it together, all the way from the worker to the consumer, are not weakened. Unfortunately, the transportation link in the Lower Ohio navigation system chain is rusty, rapidly deteriorating, and is in danger of breaking. Locks and Dams 52 and 53 are especially in danger. Earlier I mentioned the possibility of failure. Those of us who work and live in the Ohio Valley are concerned that the present structures are constructed within the seismographic area of the New Madrid fault. The last serious eruption occurred in 1811 which laid waste to the city of New Madrid on the Mississippi River. Hugh crevasses were created, one of which became Reelfoot Lake in Tennessee.

Although seismic instruments were not in existence at the time of the 1811 quake, the best estimates are that its epicenter would have measured about 8.6 on the Richter scale. The present Dams 52 and 53 could not withstand such a shock nor the lesser shock waves which would fan out from the center. Most new bridges and other large public structures in fault areas are now built to withstand seismic tremor measurements of about 6.5. The new project at Olmsted will be of the latest technology and will be built to this standard.

It has been estimated that there will be a serious quake of 6.3 magnitude within the next 12 years. It is almost a sure thing that a quake measuring about 6.3 on the Richter scale will occur in the next 50 years, according to the earthquake center at Memphis State University. It is extremely important to commence in the Ohio Valley that we be prepared for this eventuality, and insure that the Olmsted project is constructed as soon as possible.

Again, we appreciate this opportunity to testify on this essential Olmsted project and will be pleased to answer any questions.

* * * * *

TESTIMONY IN SUPPORT OF S. 2144:

DES PLAINES RIVER WETLANDS DEMONSTRATION PROJECT AUTHORIZATION

By

Professor J. Henry Sather

Early settlers looked upon wetlands as features of the landscapes that could best be converted to other uses. In light of what was then known about wetlands, their attitude was perfectly understandable. Wetlands were viewed as wastelands that gave off rank and unhealthy air, and that supported hordes of disease carrying mosquitoes as well as dangerous and undesirable reptiles. Through a variety of measures -- drainage, dredging, diking, filling, pumping, etc. -- wetlands were converted to other uses at an alarming rate. By the mid-1970's, only 99 million acres of the original 215 million acres were left. In other words, only 46 percent of the original acreage remained, and we are still losing wetlands at an estimated rate of 450,000 acres annually.

Only during recent years have we seen a significant change taking place in public attitudes towards wetlands. This is also understandable, because only recently have studies revealed that wetlands are among the most highly productive, the most complex, and the most varied and interesting ecosystems on earth. We now know that they perform a variety of important functions. They are involved in: groundwater recharge and discharge, flood flow alteration, water quality maintenance, sediment stabilization and retention, providing habitat for a great variety of plants and animals (including at least 45 percent of endangered animal species, and 26 percent of endangered plant species), and providing a variety of recreational and educational opportunities.

In recent years, Congress has been responding to these changes in attitudes. Statutes enacted to help stem the tide of wetlands destruction include: The Migratory Bird Conservation Act (1929) and Duck Stamp Act (1934), The Wetlands Loan Act (1961), The Land and Water Conservation Fund (1964), The Water Bank Program, the "Swampbuster" provision of the Food Security Act of 1985, and the Emergency Wetlands Resources Act (1986). Many states have also established programs to regulate and protect their wetland resources.

It has become apparent that wise implementation of any of these programs designed to regulate and protect wetlands resources is dependent upon our ability to objectively identify and evaluate the functions that individual wetlands (and complexes of wetlands) perform. We need to know: (1) what functions a wetland may be performing, (2) the probable significance of those functions at the local, regional and national level, and (3) the effects of various types of impacts upon functions and what types of mitigation measures might therefore be called for (including the replacement of destroyed functions by the creation of entirely new wetlands, or by restoring former wetlands). An ability to objectively identify and evaluate functions is also required to efficiently carry out wetlands acquisition programs. Inasmuch as wetlands vary in their performance of various functions, and inasmuch as there are local, regional and national differences in the importance of various functions, the ability to evaluate functions helps us to arrive at wise decisions with regard to wetland acquisitions.

A major Federal interagency effort is underway -- with strong input from several states -- to develop a system to objectively assess wetland functions. The system is called the Wetland Evaluation Technique (WET), and it is based upon what appears in the scientific literature with respect to wetland functions. The system is only as good as the depth of our knowledge of wetland functions; work on the system to date has revealed serious gaps in that knowledge. This is particularly true with respect to functions such as water quality maintenance, groundwater recharge and discharge, nutrient cycling, and flood flow attenuation. It is important that we make every effort to fill these gaps. In so doing, we will then have a diagnostic tool (WET) that will enable us to examine a wetland and with a high degree of reliability predict whether there is a high, medium or low probability that it is performing a particular function.

The Army Corps of Engineers and the U.S. Environmental Protection Agency are in the initial stages of developing wetland research programs strongly oriented toward strengthening the reliability of the WET system. In my opinion, the Des Plaines River Wetlands Demonstration Project is ideally suited to carry out major aspects of both of those programs. To my knowledge, it is the only project currently being developed that is designed in such a way as to enable us to find the answers to some of the most difficult questions about wetland functions.

Wetlands are dynamic systems, with water being the principal driving force. If one has the capability of knowing how much and what kind (chemical content) of water passes into and out of a wetland, he/she has an opportunity to not only learn how the wetland performs various functions, but also how it can be manipulated to perform those functions at optimal levels. The Des Plaines River Wetlands Demonstration Project is uniquely designed to permit this type of control -- not only in one wetland, but in a series of wetlands so that the all-important replication of experimental procedures is possible. During these times of very serious budgetary constraints, it makes a good deal of sense to pool public and private resources to achieve common goals. The Des Plaines River Wetlands Demonstration Project offers just such an opportunity.

I strongly support this bill that would authorize the Army Corps of Engineers to commit, over a period of 5 years, $2.2 million in construction and research funds to the Des Plaines River Wetlands Demonstration Project. The design of that project is ideally suited to meet the needs of many aspect of the Corps' long-term wetland research plans.

STATEMENT OF

GARY L. FAILOR

FOR THE

AMERICAN ASSOCIATION OF PORT AUTHORITIES

BEFORE

THE SUBCOMMITTEE ON WATER RESOURCES,
TRANSPORTATION, AND INFRASTRUCTURE

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

MARCH 17,1988

ON

THE WATER RESOURCES DEVELOPMENT ACT OF 1988 (S.2100)

Good morning Mr. Chairman. My name is Gary L. Failor. I am General Manager and Seaport Director at the Toledo-Lucas County Port Authority and Chairman-Elect of the American Association of Port Authorities. AAPA represents virtually every U.S. public port authority, as well as the major port agencies in Canada, and in Latin America and the Caribbean. Our members are public entities established to fulfill mandated public purposes, primarily economic development through the facilitation and promotion of waterborne commerce.

Mr. Chairman, on behalf of the Association, I commend you for sponsoring S. 2100, the Water Resources Development Act of 1988. The enactment of P.L. 99-662 in November of 1986 was an historic event, ending a long national debate over national water development policy. However, we will have lost a great opportunity if we allow our momentum to diminish. From our perspective, P.L. 99-662 was but the first step towards the regularization of a predictable federal role in the development of our nation's channel navigation system. With most of the contentious issues behind us, we urge Congress to consider and pass project authorization legislation every two years.

Future project sponsors are now entering into cost sharing agreements requiring a significant local contribution to study potential projects with good faith expectations of a responsive federal program. If a project is economically justified and is supported by the local sponsor throughout the arduous planning process, Congress should then consider project authorization in a timely manner.

Historically, many of the extraordinary delays we have experienced, from project conception to construction, can be attributed to waiting for project authorization. Such delays cannot continue if our "new partnership" with the federal government is to be mutually beneficial. Without regular legislation, our national water development program will lose its credibility. For this reason, AAPA members were unanimous in their approval of a resolution which advocated the regular passage of omnibus water projects bills--the approach you have demonstrated with this bill. We wholeheartedly support your effort. We are also encouraged by the Administration's support of the national water resources program as evidenced by S. 2101.

Mr. Chairman, in general we support the noncontroversial technical policy changes to the navigation provisions in both S. 2100 and S. 2101, in particular, the correction which would allow the deduction of project sponsor utility relocation expense from the ten percent repayment requirement.

Other provisions in the committee bill that AAPA supports include the following corrections and additions: a provision requiring the Corps of Engineers to provide periodic statements to project sponsors outlining expenditures made and those which are anticipated; a provision that directs the General Accounting Office (GAO) to conduct a review of the management and administration of the civil works program; a provision that encourages the Secretary of the Army to promote innovative technology in all phases of water resources development; and a provision that allows the Secretary to reduce the local share of project costs to the extent that there are direct and quantifiable benefits to the military.

AAPA has actively cooperated with the Corps in its implementation of P.L. 99-662 in order to facilitate this long and complicated effort. While we are generally pleased with the policy decisions made to date, there are two interpretations made by the Corps that we believe to be incorrect. First, the purchase of land to be used for environmental mitigation has been determined by the Corps to be a 100 percent local sponsor contribution which can be offset from the 10 percent repayment. This interpretation is in direct conflict with the language of section 906(c) which states that costs incurred for mitigation "shall be allocated among authorized project purposes in accordance with applicable cost allocation procedures, and shall be subject to cost sharing or reimbursement to the same extent as other project costs are shared." In our view, the statutory language and congressional intent is clear; such costs are to be shared as are other authorized project costs. The cost of mitigation land is expected to increase dramatically in the future as the land available for wetlands restoration continues to decrease. Therefore, we ask the committee to direct the Corps to change its interpretation in order to provide for sound water development with the appropriate shared mitigation responsibilities.

Secondly, the Corps has determined that section 204, which allows authorized projects to be constructed by nonfederal sponsors with subsequent repayment of the federal share from future appropriations, does not apply to continuing authority small navigation projects (section 107, P.L. 86-645). We see no reason why the potential cost savings provided to the federal government by the Title II initiatives should not be made available in the small navigation project area. This change would also allow sponsors of commercial navigation projects to make better use of section 107 funds than has been made in the past.

AAPA would like to propose for your consideration, additional changes which we believe will yield a more productive and equitable partnership between public ports and the federal government.

Lost Interest on Project Sponsor Funds. Federal government procurement law, collectively referred to as the "Antideficiency Act," prohibits the Corps of Engineers from allowing construction to begin until nonfederal funds are deposited in the U.S. Treasury. However, these monies are not paid by the Corps to a contractor until an agreed-to project segment is finished. Therefore, potential interest over this period does not accrue to the sponsor. The Corps has tried to solve the problem administratively through the use of escrow accounts and shortened contract periods, but apparently cannot eliminate the problem without an exemption from the Antideficiency Act, which this committee could provide. We want to make our contributions when the bill is payable, not when construction begins or by any other arbitrary advance payment schedule. Alternatively, interest should be paid by the government to the project sponsor for that period during which local funds are held in the U.S. Treasury and not spent.

The Allocation of Dredge Material Disposal Costs. The disposal of dredged material is often the most difficult problem associated with a harbor channel improvement. Although many factors are weighed in the decision-making process, the economic impacts of the final decision may vary widely because P.L. 99-662 gives project sponsors the sole responsibility for the cost of building sediment containment areas. Dredge material disposal is an issue of national and international significance, however, as recognized by the Ocean Dumping Act and by the United States' adherence to the London Dumping Convention. The disposal of material from federal channel bottoms is clearly integral to the overall project. We believe, therefore, that the various disposal alternatives should be treated equally in terms of cost allocation. The chosen options should be both economically sensible and environmentally sound, and be considered part of the total project costs to be shared according to section 101(a)1. Since the cost of the dredge material disposal area can now be deducted from the 10 percent repayment, this proposal would not necessarily increase the federal contribution, but would add a measure of consistency among project sponsors.

Military Benefits Offset. Although the Administration two years ago supported a provision, similar to section 207 of S. 2100 regarding military benefits, that we understand was inadvertently dropped in the House-Senate conference on H.R. 6, apparently it now opposes this concept. Nevertheless, we continue to believe that the benefits to the military from harbor development have not been fully considered in the past. Obviously, this is more important to us now that we must pay at least 35 percent of the project's costs. Accounting for these benefits is admittedly difficult. The Navy, for instance, for national security or other reasons, doesn't make public the depths required for its vessels. We understand that past attempts by the Corps of Engineers to quantify military benefits of harbor improvements have been met with resistance. For this reason, we encourage the Congress to require the Corps, as part of its economic assessment of the project, to determine the appropriate level of military benefits. The relevant branch of the military should also be required to cooperate with the Corps. Because the Corps currently does not adequately specify benefits to the federal government from a project, a fixed percentage offset should be considered for the projects already authorized.

Section 10 Permit Enforcement. AAPA would also like to see section 101(a)4 amended to require the Corps to "enforce" its section 10 permits for channel depths of less than 45 feet. Section 10 of 1899 Rivers and Harbors Act established the need for federal approval of structures to be placed in, or crossing navigable waterways. Because P.L. 99-662 called for a 50-50 cost sharing between the project sponsor and utility owner for relocations in channels exceeding 45 feet in depth, the Corps has agreed to use its powers of navigational servitude to force the utility owner to comply. For depths of less than 45 feet, the project sponsor alone must convince the utility owner to relocate the transmission line even though the federal government has issued the permit, maintains servitude over navigable waters, and the navigation improvement is a congressionally authorized project. It is an inappropriate delegation of responsibility to give local project sponsors the duty to enforce a federal permit. When the Corps of Engineers issues a section 10 permit, the applicant should understand its obligation to relocate if its usage of the federal channel bottom impedes a future navigation project that has net national benefits.

Consolidation of Redundant Environmental Approvals. Another issue we would like to bring to your attention concerns the need to eliminate redundant local permitting requirements for construction of a federal project. A federal project is subject to intensive review under the National Environmental Policy Act in order to assess direct and indirect impacts of the project, including the associated project sponsor contributions. Currently, nonfederal entities must seek additional section 10 and 404 permits to dredge access channels and berths, and to provide dredge material disposal areas when the federal channel project has been justified economically to serve the same terminals and an Environmental Impact Statement has been completed. This additional evaluation and permit requirement is not only redundant (in addition to the NEPA process, there are also a number of separate state and local project review requirements), but it delays realization of the project's benefits. We believe consolidation would free-up valuable regulatory staff time and improve the approval process without causing any adverse impact to the environment.

Corps Organization and Review Procedures. We are generally pleased with the progress made by the Corps of Engineers in constructing many critical and long-awaited projects over the last year and a half. However, many of our members have experienced frustrating, snail-paced LCA "negotiations." Although the process appears to have improved, a major communications problem within the Corps' organization was sorely evident when the majority of our LCAs were being "negotiated." Our experience with LCAs and many other aspects of the Corps' program leads us to conclude that a "black-hole" phenomenon often occurs at the Corps' Division level. When decision-related documents are sent to the Division, communication with the project sponsor is often cut off. Valuable time is wasted as Division staff are brought up to speed. Critical information from headquarters filters down to the local level only through the Division because direct contact between the District and Washington, D.C. headquarters offices is not allowed. Clearly, we think the role of the Division needs to be reassessed in light of the "new partnership" created by P.L. 99-662. We hope this will be a focus of the proposed GAO study.

No Regulatory Guidance for Sections 203 and 204. It has been well over a year now since P.L. 99-662 became law. However, we have yet to see any regulations, policy or guidance for implementing sections 203 and 204. These sections allow potential harbor channel project sponsors to plan federal projects, to construct them after they have been authorized, and to be reimbursed by the government for the federal share after construction. Had guidance been produced for public review, we may have had more to discuss regarding Corps implementation at this hearing. Since most of the projects now in the planning process were begun prior to the new law, we have not yet experienced a great demand for these initiatives. There is a great deal of interest, however, in making sure they become useful tools in the future. Several ports are considering the potential efficiencies of sections 203 and 204 as they prepare to meet the volumes of world trade projected for the 21st century.

Corps Management of the Regulatory Program. The Corps of Engineers regulatory program administering section 404 of the Clean Water Act continues to be of great concern to our members. Section 205 of P.L. 99-662 was intended to improve the administration of the program. However, section 205's two and one-half year limitation is excessively lengthy, and therefore, irrelevant to the needs of permit applicants. Program improvements by the Corps, stemming primarily from the regulatory reform effort, have been helpful. However, many permit applications often take more than a year to process, still an unacceptably long time period. AAPA has responded to the Corps' recent *Federal Register* notice seeking information on permit delays for navigation improvements. This information is to be used to respond to section 205(i), which requires a report to Congress containing "recommendations for further reducing the amount of time required for the issuance of those permits, including any proposed changes in current existing law."

To summarize briefly our response to the Corps request for comments: we believe that the Corps is unable or unwilling to manage the regulatory program. AAPA member experiences lead us to conclude that upon receipt of a permit application that is the least bit controversial, the Corps simply refers the applicant to the federal and state resource agencies to negotiate environmental impact/mitigation issues. In other words, the Corps essentially removes itself from the discussions. Once the applicant has struggled to achieve an agreement with the various agencies, which often demand inconsistent modifications to the permit, the Corps is then in the relatively easy position to render an issueless decision. I would like your permission to submit for the record our complete response to the Corps' October 30, 1987 *Federal Register* notice, and related correspondence.

After the mitigation plan is approved by the various interests, the Corps then considers the application "complete" and starts accounting for the time until the decision is rendered. We would like to see the Corps participate more fully in the negotiations between the nonfederal sponsor and the various local, state and federal agencies from the start, in order to keep the diverse interests on course and within strict time constraints. According to our informal discussions with the Corps, however, this active involvement often cannot be provided because of a lack of staff resources. We urge the committee to review this program's needs.

Moreover, the Senate Appropriations Committee views the regulatory program as too big and growing so fast that it created a separate account for the program to facilitate congressional oversight, requiring the Secretary to propose a schedule of fees to recover program costs. For the record, we totally reject the concept of ports as the beneficiaries of this unwieldy program. The prospect of a "user fee" for this "service," especially as a water-dependent industry, is totally inequitable. Mr. Chairman, we request your committee's opposition to any proposed fee. The general welfare of the country is served by this program and the increased funding it requires should therefore come from general revenues.

Need for a Unified National Mitigation Policy. Improvements to the administration of the 404 regulatory program are unlikely, Mr. Chairman, until we have a unified national mitigation policy. Recent attempts to develop a joint policy among the federal agencies have fallen through. Although the problems are admittedly very complicated and there are many interests having entrenched positions, there is an effort underway that could potentially resolve some of the issues. If these diverse interests should reach an agreement on a national mitigation policy, we recommend that the Committee immediately consider their recommendations. This is not to say that we would automatically agree with everything they recommend, only that there is a need for Congress to consider the issue. Many of our members are facing extraordinary pressures to expand as the world's economy continues to grow and to become more integrated. We need to know what the rules for development will be as we plan to handle increased volumes of cargo that will pass over our docks.

User Fee Issues

Mr. Chairman, we understand that section 208, addressing project sponsor cost recovery, and the federal harbor maintenance fee are not under this committee's jurisdiction, but we would like to take this opportunity to make a matter of public record our serious concerns with these provisions. We encourage your committee to indicate its support for our position on the following two provisions.

Section 208. Of the long term port development issues that must be addressed by Congress, the constraints put on our ability to recover the nonfederal cost of project development by section 208 of P.L. 99-662 is one of the most important. We acknowledge with appreciation the position taken by the Senate during debate on the bill two years ago. However, the resulting provision is so restrictive that it may never be used. Bond counsel advise that it is practically useless as a means of financing a project. Aside from our fundamental concern over the equity of this provision (nonfederal sponsors are being asked to assume increased costs to construct a federal project without being given any meaningful additional authorities to recover those costs), this provision so narrowly defines eligible payees (channel users) as to create an impossibly high fee schedule on those leading innovators who have developed new and efficient vessels. Fundamentally, the range of channel users of navigation projects cannot be assessed a fee commensurate with their resulting benefits because of this provision. Moreover, the approach taken under section 208 is inconsistent with the Act's approach on the federal .04 percent "harbor maintenance user fee," which is applied across-the-board. Within each harbor, ports need a similar capability.

Harbor Maintenance "Double Tax". We also believe that the .04 percent harbor maintenance fee has been implemented by the Customs Service in a manner that is inequitable and contrary to this nation's fundamental interest in facilitating the flow of waterborne commerce. Cargo should be taxed one time without regard to how it reaches its final destination. For example, all agree that liner service carriage of cargo bound for a particular destination port, but on board a ship that calls at another U.S. port first, pays the fee only one time at the port of entry. However, if the cargo is taken off the first vessel and placed on a smaller one for transhipment to another port, the same cargo is taxed at both ports. This "double taxation" discriminates against efficient and economic alternatives, such as all-water feeder service movements. An amendment to rectify this disparity was included in the House version of budget reconciliation legislation last year, but was dropped as part of the fiscal 1988 budget accord.

In summary, we greatly appreciate this committee's interest in addressing our national need for a strong and viable water resources program. AAPA believes congressional passage and enactment of an omnibus water bill in the 100th Congress is critical and will set a very important precedent. We look forward to working with the committee and the Congress to ensure that our federal water resources policies are responsive to a productive and equitable partnership. Thank you for this opportunity to present our views.

Working for the Nature of Tomorrow™
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Statement of

Dr. David C. Campbell
before the

**Subcommittee on Water Resources,
Transportation, and Infrastructure of the
Committee on Environment and Public Works
United States Senate**

relating to S. 2100

The Water Resources Development Act of 1988

March 17, 1988

Thank you for this opportunity to present the testimony of the National Wildlife Federation on S. 2100. My name is David Campbell. I am the resources economist for the Federation. The National Wildlife Federation represents over 4.8 million members and supporters and 51 state and territorial affiliates. We participated in the resolution of the major water policy issues that resulted in the passage of the Water Resources Development Act of 1986 (Public Law 99-662).

Senate Bill 2100 would authorize the United States Army Corps of Engineers to construct eleven new water resources projects, increase the authorized cost ceiling for the Redwood River project in Minnesota, correct technical errors in P.L. 99-662, and provide for other purposes. On behalf of the Administration, Mr. Stafford has introduced a similar bill, S. 2101, that requests authorization for four new projects, rather than eleven.

The National Wildlife Federation is pleased that the sponsors of the two bills have not attempted to undo the major reforms agreed to and incorporated into P. L. 99-662. We urge you to resist all attempts to roll back the important cost sharing provisions that your Committee fought so hard to include in the historic compromise bill.

We support the Committee's intention to return to a regular timetable authorizing new Corps' projects every other year. The Committee will be able to improve upon and clarify the important reforms it achieved in 1986.

PROJECT AUTHORIZATIONS

Sunset provision.

The Committee should provide a five-year sunset provision for projects authorized in this bill as was included for projects authorized in Public Law 99-662.

Lower Ohio River, Illinois and Kentucky.

The Federation asks the Committee not to authorize the proposed new Locks and Dam on the lower Ohio River at this time. Instead, the Committee should request and review information relating to several aspects of the proposed project before authorizing this expensive project. In withholding judgement, the Committee will not disrupt waterway traffic because the two large locks at each dam have been rehabilitated since the Corps' study was completed.

The Report of the Chief of Engineers, dated October 30, 1986, recommends replacing existing Locks and Dams 52 and 53 at an estimated cost of $775 million, with the costs of construction to be paid one half from amounts appropriated from the general fund of the Treasury and one half from amounts appropriated from the Inland Waterways Trust Fund. Each existing lock and dam consists of a 110- by 600-foot lock and a more temporary 110- by 1200-foot lock. The larger locks were rehabilitated in 1987. The proposed replacement dam would be at a new location and contain two 1200-foot locks adjacent to the Illinois bank. Construction could interfere with the nesting and feeding patterns of American bald eagles and wintering waterfowl, particularly Canada Geese.

There are several reasons why we believe that the proposal for the new lock and dam should be reexamined. The Illinois Department of Transportation commented to the Board of Engineers for Rivers and Harbors that the feasibility study had understated the capacity of the existing facilities and overstated potential benefits. The Director of the Illinois DOT believes that innovative repair and improvements to the existing facilities could improve their structural integrity, operating performance, and service life.

We have not yet analyzed the Feasibility Study on the replacement of Locks and Dams 52 and 53 but have analyzed the similar Gallipolis Lock and Dam report. The Gallipolis is upstream from Locks and Dams 52 and 53. We found that the Corps had seriously underestimated the number of tons per barge and the number of barges per tow, resulting in a large overestimate of the number of tows using the Gallipolis locks and therefore the extent of the delays in waterway movements. In addition, a number of steel mills in the region have closed since 1979 so that waterway traffic tonnage is less than the Corps predicted.

We also performed a congestion fee analysis which found that the additional costs of moving traffic diverted by a simulated congestion fee would be less than the costs of the proposed new locks at Gallipolis. Congress should require the Corps of Engineers to perform a similar congestion fee analysis on the traffic at Locks and Dams 52 and 53 using current data.

The proposed project appears to have major design problems. The Corps' estimate of the costs has increased from $566 million in late 1985 to $775 million in early 1988. The proposed replacement dam would create a higher and larger reservoir than now exists. Some of the adjoining lands consist of an unconsolidated clay base that absorbs moisture. Roads, railroads, and houses could slump from the sponge effect, exposing the Corps of Engineers to possible lawsuits.

The Inland Waterways Trust Fund is not large enough to fund all the projects already authorized, let alone an additional $380 million for one-half of the costs of the proposed new locks and dam on the Ohio River. If the project were started in 1990, construction would plod on for at least twenty years awaiting its tiny allotment from the Trust Fund. If Congress authorized this project or a more suitable alternative in another authorization bill, the project could be completed just as soon as if it were authorized during this Congress.

The requirement that at least one-half of the costs of new inland waterway construction be financed from the Inland

Waterways Trust Fund provides discipline to the political pressures for new waterways and a reason for both Congress and waterway users to set priorities for major construction. We urge the Committee to continue this form of cost-sharing.

MILITARY BENEFITS OF HARBOR IMPROVEMENTS

The Federation opposes Section 207 of S. 2100 because it would tamper seriously with the cost-sharing requirements of Public Law 99-662. It is essentially an argument to give weight to a lowering of the non-Federal share of harbor improvements. Military benefits are subsumed within the broad Federal interest that justifies the Federal contribution of 50% or more to virtually every port project. If this provision remains in the bill, we suggest that the entire provision be made applicable only when and to the extent the share of project costs allocated to military benefits exceeds the Federal share of the project under current law.

MANAGEMENT OF RESERVOIRS FOR EXISTING RECREATION AND FISH AND WILDLIFE PURPOSES

The National Wildlife Federation and other conservation organizations suggest that the Committee add a provision to this bill to clarify the responsibility of District Engineers regarding management of dams and reservoirs for existing recreation and fish and wildlife purposes that recognizes the maturity of the Federal water resources system.

The Corps has been providing valuable assistance to whitewater rafters and fish and wildlife management by timing reservoir releases to enhance benefits. Congress has not specifically authorized downstream recreation or fish and wildlife enhancement purposes for many of these projects, although some features were included as part of the mitigation agreement. In proposals to construct non-Federal hydropower at Corps' dams, developers have asked for operations of the dams that would imperil these benefits.

Congress enacted a *specific* provision in P. L. 99-662 authorizing downstream recreation as a project purpose for the Summersville Dam and Reservoir in West Virginia. We will be happy to work with the Committee to craft *generic* language to grant District Engineers similar authority, where appropriate and consistent with other project purposes, to continue to assure releases appropriate for recreation and fish and wildlife purposes.

This language should provide that cost shares for such purposes should be consistent with P. L. 89-72, the Federal Water Project Recreation Act of 1965: 50%-50% for new separable features, and 100% Federal for non-separable features such as dam operations. There should be no new reallocation of joint costs assigned to recreation.

FEASIBILITY STUDIES

Release of private hydrologic studies to the Corps.

We would like to mention the issue that arises when non-Federal entities, generally permit applicants, view hydrologic modelling as proprietory even though they receive credit for the model as non-Federal cost sharing. Congress should require that if the Corps of Engineers pays for all or part of a study, it should receive the full results of such study, including the model.

Non-Federal sharing of costs of inland waterway studies.

The 1986 Water Resources Development Act required non-Federal entities to share the costs for all new Corps feasibility studies -- all, that is, except feasibility studies for inland waterway projects, which remain 100% federally funded. This inconsistency is indefensible. If local interests can't be expected to share the costs of an inland water study, the 50% non-Federal share should be required to come out of the Inland Waterways Trust Fund. Such a requirement would restrain costly and controversial studies, such as one proposed for the Lake Erie-Ohio River Canal.

COST SHARING FOR FISH AND WILDLIFE MITIGATION OPERATIONS AND MANAGEMENT

Congress should clarify the non-Federal share of the costs of operation and management for fish and wildlife mitigation and enhancement. We thought that, in P. L. 99-662, Congress intended that this O&M should be cost-shared in the same percentage as the costs of the initial enhancement. The 1986 bill directed that the costs of some enhancement be 100% Federal with the costs of other enhancement at 75% Federal. The initial costs for certain Corps' project-related mitigation and enhancement measures, such as for threatened species or National Wildlife Refuges, are borne 100% by the Federal government. S. 2100 should clarify that the operating and maintenance costs should also be 100% Federal, but not as a part of the budget for the U. S. Fish and Wildlife Service, where these O&M funds may displace moneys that might otherwise be used for important purposes other than the operation of facilities designed for mitigation.

We agree with the Committee's proposal not to require Fish and Wildlife interests to provide funding for the Mississippi and Louisiana Estuarine Areas Project. The Corps of Engineers describes this as an enhancement project. We argue that this project is mitigation, not enhancement. The waters were less saline when the Mississippi River was allowed to flood periodically; therefore the project's main purpose is to mitigate for project-induced damages. The costs should be cost-shared in the same manner as the flood damage reduction and navigation costs have been.

STATEMENT OF

MR. ALBERT A. GRANT
PRESIDENT

AMERICAN SOCIETY OF CIVIL ENGINEERS

ON S.2100

The Water Resources Development Act of 1988

SUBMITTED TO THE
WATER RESOURCES, TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

UNITED STATES SENATE

Washington, DC
March 17, 1988

Good morning Mr. Chairman, and Members of the Committee, it is a pleasure for me to be here today. On behalf of the more than 100,000 members of the American Society of Civil Engineers (ASCE), I appreciate the opportunity to testify on Section 205 of S.2100, The Water Resources Development Act of 1988. Section 205 of this bill encourages the U.S. Army Corps of Engineers under existing authority, whenever feasible "to promote long- and short-term cost savings, increased efficiency, reliability, and safety, and improved environmental results through the use of innovative technology in all phases of water resources development projects and programs under his jurisdiction." ASCE strongly supports the thrust of Section 205.

I should emphasize at the outset, Mr. Chairman, how much ASCE appreciates your interest, and the interest of the Water Resources, Transportation, and Infrastructure Subcommittee, in the area of infrastructure research and innovation generally. It is, indeed, more than appropriate that this interest in infrastructure innovation should extend to one of the world's premier engineering organizations, the Army Corps of Engineers. As you know from my previous testimony, Mr. Chairman, a top priority for my term as ASCE President is for ASCE to take a leadership role in ensuring the quality and value of current and future infrastructure investments through increased research, and productivity in the design, construction, and management of major public works projects. Water resource projects are an integral component of the nation's public works infrastructure.

In this era of fiscal constraint, it is imperative that public and private institutions explore new ways of deriving more quality and value from every infrastructure dollar invested. Given current and near-term Federal budget realities, and the vital linkage between a sound infrastructure and U.S. economic health and competitiveness, more infrastructure innovation is necessary, not less. It is important to remember that there are hundreds of billions of dollars worth of public works assets in the U.S., including many water projects. Just a slight increase in efficiency or cost-savings can have tremendous economic benefits to the nation.

The Corps of Engineers, under the direction of the new Assistant Secretary of the Army for Civil Works, Robert W. Paige, is already launching an important and laudable effort to pursue R&D activities that would benefit the entire construction industry.

Section 205 would give the Corps additional impetus to develop innovative solutions in pursuing its water resource development mission. Section 205 states that "to further this goal, the Congress encourages the Secretary to -

1) use procurement and contracting procedures that encourage innovative project design, construction, rehabilitation, repair and operation and maintenance technologies;

2) frequently review technical and design criteria to remove or modify unnecessary impediments to innovation;
3) increase timely exchange of technical information with universities, private companies, government agencies, and individuals;
4) foster design competition; and
5) encourage greater participation by non-Federal project sponsors in the development and implementation of projects."

Mr. Chairman, I have several observations about this fifth point concerning participation by non-Federal sponsors. The public is generally under the impression that research, development and innovation automatically leads to superior design, increased efficiency, and cost savings. Sometimes this is true, but more often new technology takes time to develop fully. Initial costs associated with new technology may run a little higher than with conventional technology. This is not unusual, and the public needs to be sensitized to this reality.

And while innovation generally does pay off in the future, there are those infrequent occasions when a new technology fails. With respect to flood control projects, for example, where the local beneficiaries are expected to pay 25 percent of a project's cost, there may be a reluctance to go along with a new, untried, yet innovative solution. Significant local funding is involved, and understandably, local interests may want a relatively "sure" solution. To overcome this potential problem, perhaps the Corps of Engineers should establish a contingency fund whereby the Corps could take alternative corrective action in the unlikely event of a failed innovative solution. Such an approach might well allay the concerns of local project sponsors and create more opportunities for the Corps to demonstrate innovative technologies. Mr. Chairman, I want to be careful here not to suggest or create a potentially open-ended financial liability for the Corps and the Federal Government. However, we may need to find some type of incentive to encourage non-Federal sponsors to consider innovative technologies.

In closing, I wish to underscore ASCE's support for Section 205 which asks the Corps to redouble its efforts in the area of innovative technology. Given the experience, resources, and talent of the Corps of Engineers, such an effort appears very worthwhile. My comments concerning Section 205 are intended to suggest a possible way of strengthening this language to achieve the desired results; that is, greater demonstration of innovative technologies. ASCE stands ready to assist the committee in achieving this goal.

Thank you.

AMERICAN PUBLIC POWER ASSOCIATION
2301 M STREET NW WASHINGTON DC 20037 • 202/775-8300

TESTIMONY OF
DONALD L. STOKLEY
MUNICIPAL ELECTRIC AUTHORITY OF GEORGIA
ON BEHALF OF THE AMERICAN PUBLIC POWER ASSOCIATION
BEFORE THE
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
SUBCOMMITTEE ON WATER RESOURCES, TRANSPORTATION, AND INFRASTRUCTURE
ON THE
"WATER RESOURCES DEVELOPMENT ACT OF 1988"

March 17, 1988

Mr. Chairman and Members of the Subcommittee, thank you for this opportunity to testify today on the need for public participation in the operational decision making process of the U. S. Army Corps of Engineers. My name is Donald L. Stokley, and I am President and General Manager of the Municipal Electric Authority of Georgia (MEAG). MEAG is a joint-action agency serving the bulk power needs of 48 locally controlled, public power systems in Georgia serving a population of more than 800,000. I am testifying today on behalf of MEAG and the American Public Power Association (APPA).

APPA is the national service organization representing more than 1,750 community-owned, public power systems. Approximately 500 public power systems in 34 states purchase all or part of their bulk power from one of the five federal power marketing administrations (PMAs). In addition, 600

NOTE: The attachments to this statement have been retained in committee files.

rural electric cooperatives and about 60 private power companies purchase power from the PMAs. This power is marketed from the nation's 130 multipurpose water projects, including 73 projects constructed and operated by the U.S. Army Corps of Engineers. These Corps projects, dispersed across the country, generate more than 83 million kilowatt-hours of electricity. Included among these are the 22 Corps projects within the marketing area of the Southeastern Power Administration (SEPA). Approximately 23 percent of the capacity needs and 10 percent of the energy needs of MEAG's member systems is met through power purchases from SEPA.

I. The Issue

Mr. Chairman, the subject of my testimony is the need for public participation with respect to operation of federal water resource projects operated by the U. S. Army Corps of Engineers.

The Corps' operation of these projects affects a great many people of varied interests. These include consumer-owned utilities such as public power systems and rural electric cooperatives, investor-owned utilities, municipal, industrial and agricultural water users, transportation interests, recreational users and conservationists. Some of the users, including power customers, contract with the federal government for project benefits, and make payments to the Federal Treasury which make these projects commercially viable. For instance, more than 70 percent of the construction costs for the Georgia-Alabama system, with interest, are repaid to the U.S. Treasury by power customers.

In recent years, in response to the demands of one project beneficiary or another, the Corps has initiated major modifications to project operations. Often these modifications have been proposed and implemented without notification of, or consultation with, other project beneficiaries whose interests may be jeopardized. In other cases, we believe those proposed modifications would violate current contractual commitments for use of the projects. In many cases, the modifications are in conflict with the congressional authorization for the project, and, if implemented, would alter the scheduled repayment of project costs.

It may not be that the Corps acts intentionally to exclude certain groups of project beneficiaries. But our concern is not motive; it is impact. These major modifications to project operations have been initiated largely in response to the interests of a particular project user; unfortunately, there has been no formal or systematic effort to consider the interests of all potentially affected parties through a notification and comment procedure. The simple fact is that there are no uniform procedures to assure that major modifications to project operations are made openly after an opportunity for public input.

Attached to this statement are three factual examples which underscore this problem. In each case, the Corps of Engineers was approached by an affected user group and asked to modify project operations. And in each case, the Corps responded with proposals which adversely affected other project users.

The common thread in these cases is the absence of any opportunity for public comment. The only means of input afforded the affected parties was an eleventh hour political or judicial intervention, or the threat of such intervention.

The attached examples describe situations in which hydropower customers have been the adversely affected parties. I am familiar with each of these examples. It is important to recognize, however, that the concerns raised by these examples affect the rights of all project beneficiaries. Power customers are not the only project users that will benefit from procedural due process. I believe an open, participatory process will benefit all project users.

II. The Uniqueness of Corps of Engineers Procedures

Most federal agencies, when making decisions as significant as major modifications to federal water project operations, are subject to procedural provisions imposed by statute. Federal agencies are generally subject either to the formal or informal rulemaking provisions of the Administrative Procedure Act ("APA"), or to other statutory provisions specifically designed for the agency. Under these provisions, parties affected by proposed changes have the right to receive notice and the opportunity to comment on changes.

No such provisions currently apply to the Corps. In response to questions by Chairman Moynihan, (See attachment 2, p. 3-4), the Corps stated that it relies on the exception for matters relating to "public property" (5 U.S.C. Section 553(a)(2)) to shield Corps activities from the notice and comment requirements of the APA.

It is interesting to note that other agencies with responsibilities similar to the Corps either by statute or choice do not operate under the same exception. For example, the "public property" exception was removed in 1977 from actions of the five PMAs, which are responsible for marketing the electric power produced at federal water resource projects (42 U.S.C. Section 7191 (b)(3)). Unfortunately, no corresponding amendments have been adopted to extend this concept to the Corps, nor has the Corps voluntarily decided to waive the "public property" exception for its operational activities.

As noted in response to questioning by Representative Glenn English, chair of the House Government Operations subcommittee on government information, regulations governing the Corps' activities do in fact require the Corps to provide the opportunity for public participation to the extent practicable. (See Attachment 3, p. 2.) However, these regulations have little discernible impact. They were in existence during the occurrence of the three examples described in Attachment 1, and yet the Corps was prepared to implement these major operational changes without any public participation whatsoever.

Thus, the Corps appears to be free to make operational decisions without public accountability. The Corps assumes it has broad discretion to determine whether public participation in its decisonmaking processes is appropriate. Few other federal agencies are granted or assume they have such discretion.

III. The Solution

Absent a legislative directive, the Corps will likely continue to make major operational changes without the participation of all project beneficiaries. To date, project participants have been forced to rely on luck, third party notification or their own initiative to learn of such changes.

Frequently, when project participants are alerted to pending changes and confront the Corps, the Corps seems able to reach solutions satisfactory to all interested parties. The Corps' ability to resolve these conflicts among competing project interests suggests that the imposition of routine public notice and comment procedures on the major operational decisions of the Corps is appropriate and workable.

The American Public Power Association believes that a legislative solution can be crafted that will aid all parties interested in project operation by ensuring that major operational modifications at Corps facilities would be an open, public process. The draft legislative language (see Attachment 4) would address this problem by extending notice and comment requirements to modifications or changes in operation of federal water resources projects by removing the applicability of the "public property" exception of the APA informal rulemaking section to Corps activities. In addition, the draft language makes clear that operation modification decisions are not to be treated as "procedural" rules which are excepted from informal rulemaking requirements.

It is not the intent of our draft legislation to expose the daily operational decisions of the Corps to unreasonable notification requirements. For that reason, our draft language leaves intact other exceptions of the APA. Rather, it is our desire to promote public knowledge of, and participation in, those Corps operational decisions that have a major impact on project beneficiaries and the public.

Balancing the interests of competing project uses is a difficult task. This difficulty is compounded when the effort is attempted without the benefit of public participation and the affected project participants, including those that have played a vital role in repaying the construction costs of the project, are excluded from the process. Such a procedure -- or more accurately such a lack of procedure -- substitutes ad hoc intervention for orderly participation and ultimately intensifies the friction that already exists between project interests.

It is my belief that if Congress ultimately chooses to alter project purposes, priorities and operations, then existing project participants should be made whole. In the mean time, providing the opportunity of public notice and comment will go a long way towards ensuring responsible decision making and restoring amicable relations between project interests and with the Corps. I urge the members of the Subcommittee to incorporate this due process legislation in the pending Water Resources Development bill.

Thank you.

NICHOLAS J. MELAS
PRESIDENT

THE
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TESTIMONY BEFORE
THE SUBCOMMITTEE ON WATER RESOURCES, TRANSPORTATION AND INFRASTRUCTURE
OF THE
SENATE COMMITTEE ON THE ENVIRONMENT AND PUBLIC WORKS
RELATIVE TO
THORNTON AND McCOOK PROJECT
MARCH 17, 1988
BY
NICHOLAS J. MELAS
PRESIDENT, BOARD OF COMMISSIONERS

I am grateful and delighted for the opportunity to appear before this distinguished subcommittee to speak in support of a project which we believe to be a worthy candidate for inclusion in the Water Resources Development Act of 1988. This project is the Chicago Underflow Plan, Final Phase I GDM Report, and is known as the Thornton and McCook Project.

While our area of 870 square miles is contained within one county in Northeastern Illinois, our population of 5.5 million would rank 14th among the most populous States of the Union. For many years, our area has been ravaged and the population has been traumatized by flooding which occurred repeatedly and almost with predictable regularity. Watching an oncoming disaster charge towards you and knowing that you are helpless against the onslaught, is more than a traumatizing experience.

Twice over the last two years, the President declared us a disaster area, following raging floods that literally rendered into islands numerous subdivisions, established neighborhoods, hospitals and schools. In that part of our area which is the more densely developed and mature, with a combined area of 370 square miles, consisting of the City of Chicago and

50 contiguous suburbs, there are 550,000 homes which are subject to flooding at any time. Of these, 185,000 homes flood on a regular basis because of inadequate channel outlet capacity. The annual damages sustained exceed $140 million. If the project were in place, these damages could be reduced or eliminated. Furthermore, we should consider the safety and peace of mind of the two million people affected, and the disaster relief funds that could be saved.

The channel outlet is the Chicago River, which at one time served as a drainage outlet as well as waste outlet and flowed to Lake Michigan, thus polluting our drinking water. The River was reversed many years ago and the source of our drinking water was protected. But its capacity as a drainage channel has been overtaxed over the years and it has become woefully inadequate, with its waters polluted by the discharge of combined sewer overflows. To solve this problem, MSDGC adopted the Tunnel and Reservoir Plan (TARP) in 1972, as the most cost effective solution as well as the most environmentally and socially acceptable alternative. The Plan envisaged the construction of a river under the existing Chicago River, by the construction of deep tunnels, up to 35 feet in diameter and 300 feet below the surface. To provide an outlet for the new river, reservoirs were to be constructed at the end of the tunnel. Fifty-five miles of tunnels have been constructed at a cost of $1.2 billion and have been operational since 1985. But this new river has no place to go when it fills up during rain. The Thornton and McCook Project provides the reservoir outlet for the new river and will be emptied after the rain. Without this outlet, the local drainage has nowhere to go except by backing up and storing combined stormwater and sewage in the homes and streets.

This innovative solution, in which we invested a great deal of money and talent, solved a complex problem, and we take pride in being pioneers. Now after more than ten years of study and evaluation, the Corps of Engineers has formulated and recommended a flood control project to reduce the flood damages caused by the inadequate channel capacity and has published its findings and recommendations in its report of December 1986. The Thornton and McCook Project will provide storage capacity of 47,000 acre-feet (15 billion gallons) at a cost of $397 million and will produce annual benefits of $75 million. The total benefits of the project are almost twice as much as the total cost (benefit/cost ratio of 1.9). This is a very sound investment with a high rate of return, not to mention the enhancement of the quality of life, safety and peace of mind. The Board of Engineers approved the project in June 1987, and the final approval by the Chief of Engineers is reported to be imminently forthcoming. The Governor of Illinois has endorsed the project and urged its implementation. Indeed, all reviews and all public hearings have indicated full and unanimous support. In professional circles, the project is hailed for its farsightedness, innovation and benefits.

We take particular pride in our contribution to the Thornton element of the project in which our staff saw reason to invest time and talent to review and evaluate the draft recommendations of the Corps of Engineers first released in February 1986. We are proud that our review and evaluation resulted in the formulation of proposals for design changes which produced $24 million in savings to the taxpayers at large. These changes involved coordination and consultation between four agencies at the Federal, State and local levels, and were welcomed by the Corps and incorporated in the final report.

Under the cost-sharing formula of PL 99-662 of 1986, the local share of the project is calculated to be $100 million. We and the residents of our area are more than willing to make our contribution to solve our problems. Our verbal support of the project is coupled with our pledge to discharge our responsibilities and place our resources behind its implementation.

We are fully committed to pay our share and fully committed to the implementation of the project. Indeed, substantial financial and other commitments have already been made; more specifically towards the acquisition of the land rights. We anticipate completing the acquisition of the land rights for the Thornton element by August 1988, and for the McCook element in 1989.

Considering the size and complexity of the project, the planning and design will take three to five years and involve an expenditure of $10 million. The construction will take five to ten years. We are making these expenditures and long-term commitments because we believe in and support the concept of partnership between Federal and local governments as conceived by PL 99-662 for water resources projects. We are fulfilling our partnership responsibilities and are confident that the Federal Government as our partner will work hand in hand with us for the implementation of this project. We therefore respectfully request and strongly urge that the Thornton and McCook Project be included for authorization in the Water Resources Development Act of 1988.

AT:ah
3-11-88

1988

STATEMENT
ON
SANTA ANA RIVER MAINSTEM CALIFORNIA FLOOD CONTROL PROJECT

(TECHNICAL AMENDMENTS TO PL 99-662)

ON BEHALF OF

THE LOCAL PROJECT SPONSORS ORANGE, RIVERSIDE AND SAN BERNARDINO COUNTIES FLOOD CONTROL DISTRICTS

BY

CARL R. NELSON
Director, Public Works
Orange County

KENNETH L. EDWARDS
Chief Engineer
Riverside Co. Flood Control
& Water Conservation Dist.

KENNETH A. MILLER
Director, Transportation
& Flood Control
San Bernardino County

TO: UNITED STATES SENATE SUBCOMMITTEE
ON WATER RESOURCES, TRANSPORTATION,
AND INFRASTRUCTURE, COMMITTEE
ON ENVIRONMENT AND PUBLIC WORKS

HONORABLE DANIEL PATRICK MOYNIHAN
Chairman

The Flood Control Districts of Orange, Riverside and San Bernardino Counties, herein called Districts, have been working in concert with the Corps of Engineers to formulate a Local Cooperation Agreement (LCA) for the construction of the Santa Ana River Mainstem, including Santiago Creek, California Flood Control Project. In order to develop an LCA which permits realistic reimbursement or credit for installation costs in relation to the size of the project, and also, an LCA which complies with federal statutory requirements and concurrently recognizes limitations imposed by the State constitution, a need has arisen to make some technical amendments to the Water Resources Development Act of 1986 (Public Law 99-662), herein called Act, as follows:

(1) Section 913 of the Act [42 USC 1962d-5a] This statute limits Federal reimbursement or credit for contributions to $3,000,000 if the Districts construct portions of the project found to be compatible work by the Corps of Engineers. This limitation, however, will cause some inequities. For example, Orange County Flood Control District has constructed two (2) levee improvements within the Santa Ana Flood Control Channel, which represents compatible construction work on the project at a cost of approximately $2,900,000. As a result only $100,000 will be available to reach the $3,000,000 limitation, and any sums for compatible work for the project in excess of that

limitation would not be eligible for reimbursement or credit.

In effect, the statute does not contemplate the impact of such a monetary limitation upon a project of this magnitude. A limit related to the size of the project may be more appropriate in terms of a dollar amount or a percentile of the total project cost. This would not affect the cost to the Federal government because compatible work must be approved by the Corps of Engineers and could reduce the future Federal costs of the project.

Proposed Amendment

Amend Section 913 of the Act [last sentence of 42 USC 1962d-5a] to read:

> "The amount of Federal reimbursement, including reductions in contributions, for a single project shall not exceed $3,000,000 or 1% of the total project cost, whichever is greater." (Underscoring denotes new figures and language).

(2) Section 912(a)(2) of the Act [42 USC 1962d-5b(a)]

This statute, as presently written, provides that an agreement, such as is contemplated for this particular flood control project, may include language to the effect that future State appropriations may not be obligated to meet any performance or payment under such agreement, if such action would be inconsistent with State constitutional or statutory limitations. This language simply relates to future State appropriations, but it does not relate to future local appropriations. Consequently, the Districts are not afforded the same protection given the State even though the Districts are subject to the same State constitutional proscription against binding future governing bodies as is the State.

In addition, an amendment to the State constitution (Article XIIIB of the California Constitution Sections 1 through 11, inclusive) provides, in pertinent part, that the total annual appropriations of a local government, such as a county or flood control district, must not exceed the appropriations for that county or flood control district for the prior year subject to cost of living and population adjustments. There are no provisions in the Act which recognize this proscription. Accordingly, an agreement for the flood control project, in question, which does not contemplate this proscription could place the Districts in the uncompromising position of requiring performance and payment(s) in excess of their fiscal year appropriation limits proscribed by the State constitution.

appropriations may not be obligated to meet any performance or payment under such agreement, if such action would be inconsistent with State constitutional or statutory limitations. This language simply relates to future State appropriations, but it does not relate to future local appropriations. Consequently, the Districts are not afforded the same protection given the State even though the Districts are subject to the same State constitutional proscription against binding future governing bodies as is the State.

In addition, an amendment to the State constitution (Article XIIIB of the California Constitution Sections 1 through 11, inclusive) provides, in pertinent part, that the total annual appropriations of a local government, such as a county or flood control district, must not exceed the appropriations for that county or flood control district for the prior year subject to cost of living and population adjustments. There are no provisions in the Act which recognize this proscription. Accordingly, an agreement for the flood control project, in question, which does not contemplate this proscription could place the Districts in the uncompromising position of requiring performance and payment(s) in excess of their fiscal year appropriation limits proscribed by the State constitution.

Proposed Amendment

Amend Section 912(a)(2) of the Act [last sentence of 42 USC 1962d-5b(a)] to read:

> "(2) by adding at the end of the following: 'In any such agreement entered into by a State, or a body politic of the State which derives its powers from the State constitution, or a governmental entity created by the State legislature, the agreement may reflect that it does not obligate future State legislative or local body politic appropriations or require appropriations in excess of its authority ~~for/such/performance/ and/payment~~ when obligating ~~future~~ such appropriations would be inconsistent with State constitutional or statutory limitations.'" (Underscoring denotes new language and crossouts denote language deleted).

The Districts are most desirous of participating in this critically needed flood control project, and earnestly seek your assistance in making these technical amendments.

Respectfully submitted,

Kenneth L. Edwards

Kenneth L. Edwards, Chief Engineer
Riverside County Flood Control and
Water Conservation District

Milwaukee Metropolitan Sewerage District
735 North Water Street Milwaukee, Wisconsin 53202-4151
414-272-5100

March 17, 1988

Milwaukee Metropolitan Sewerage District
Statement Before
U.S. Senate Environment and Public Works Committee
Subcommittee on Water Resources, Transportation and Infrastructure

My name is Gary Gagnon, Civil Project Engineer with the Milwaukee Metropolitan Sewerage District representing Patrick Marchese, Executive Director of the District.

Major portions of the urbanized area served by the Milwaukee Metropolitan Sewerage District are subject to severe flooding problems. The Metropolitan Sewerage District has been given limited authority to control flooding in its service area by the Wisconsin State Legislature. With this authority in mind, the District contracted with the Southeastern Wisconsin Regional Planning Commission in 1985 to assess the District-wide flood control needs. As this study progressed and the extent of the District's jurisdiction over flood related issues was fully realized, the District found itself in a position of being unable to deal with the magnitude of flooding problems which need timely attention.

What has raised the profile of the problem and has caused the threat to public safety and health has been the particularly severe flooding problems which have occurred in 1986 and again in 1987 in all five of the major watersheds comprising the Metropolitan Milwaukee area. The worst event occurred on August 6, 1986, and included one fatality attributed to the flood. The total flood damages from this storm were estimated at $6 million by the Federal Emergency Management Administration. What is particularly distressing is that over $1 million in damages occurred at a local hospital. In addition, $2.1 million in damages occurred at Milwaukee's Mitchell International Airport as well as major traffic disruptions throughout the city. It is simply an intolerable situation to leave major health care facilities, in particular, vulnerable to the next storm event.

The five watersheds making up the Milwaukee area are the Milwaukee River, Menomonee River, Root River, Kinnickinnic River and Oak Creek watersheds. The District is currently working with the U.S. Army Corps of Engineers Detroit District Office to address the Kinnickinnic River watershed problems via the Corps' Section 205 Small Projects Authority. However, the flooding problems and the projects necessary to solve those in the other watersheds will require more intensive technical and financial commitments than are available from that program or economically viable on a local level. These problems are well beyond the scope of the Corps' continuing authorities and we are prepared to work with the Corps to determine the extent of the federal interest in these wide reaching flood control problems.

Among the most severe and costly to solve flooding problems have occurred in the Lincoln Creek subwatershed of the Milwaukee River watershed. This area includes approximately 1600 residences which are subject to flooding from the 100 year recurrence interval flood event. However, the reality is that most of this area experiences flooding during events of much less severity than the 100 year flood. In August and September of 1986 some areas along Lincoln Creek were flooded twice in 37 days. Both of these storm events were estimated to have a severity equal to that of the worst storm which on the average occurs once in five years. Both of these events caused damages to private and public property and attendant health hazards due to flooded basements and storm and sanitary sewer backups. The projects identified by the Southeastern Wisconsin Regional Planning Commission (SEWRPC) required to abate this flooding will involve major channel modifications to approximately 6.7 miles of Lincoln Creek including dredging, channel deepening and widening, concrete lining, and construction of dikes and floodwalls with attendant stormwater pumping facilities. The estimated cost of the project is in excess of $30 million. I would like to point out for the record here that the assessment of the District's flood control needs as developed by the SEWRPC is a two phased plan consisting of a policy plan element and a system plan element. The system plan which is being developed on a watershed by watershed basis is extremely detailed and includes assessments of local problems, a range of alternative solutions, benefit to cost ratios and preliminary design work. We believe that we can ultimately reduce the Corps' project review period by providing this analysis to the Detroit District, once the Corps is given the authority to look at our problems.

Although it has not experienced the severe flooding problem of other watersheds, the Root River watershed has the potential for major flooding as well. The last major flooding in this watershed occurred in 1974. Fortunately, the most intense storms which have happened in recent years have not stricken the entire watershed. However, highly localized flooding in portions of the watershed occurs annually. Abatement of the flooding problems will require purchase and physical removal of up to 60 homes which are in the Root River floodplain. Removal of these homes will enable channelization to occur in upstream areas which cannot be done until the homes are out of the way. The cost for removal of the homes is expected to exceed $9 million. While the cost for channelization to eliminate the flooding in the upstream areas is still being developed, it may run as high as $10 million more.

The flood control needs in the Menomonee River watershed will be re-evaluated during the District's continuing flood control planning activities later this year. There are nearly 400 homes in this floodplain. Solution of the flooding problems is expected to include removal of homes, structure floodproofing and some channelization. The current estimate for only the channelization portion of the work is approximately $12 million. Structure floodproofing and removal may entail as much as another $10 million expenditure. In addition, we have incurred flood damage along the Oak Creek although to a lesser magnitude than in the other watersheds.

Although the Sewerage District has taken steps to reduce the flood hazards to the communities due to the recent back-to-back storm events, our efforts are no match for the magnitude of the problem. The total expenditure required in the four watersheds will exceed $70 million. In light of the severe damages the Milwaukee area has incurred recently, we are respectfully requesting that the subcommittee include in its pending water resources authorization bill, study authority for the Corps of Engineers to begin a thorough investigation of the flood control problems in the Milwaukee area. In particular, we are requesting that the Corps be provided study authority to investigate the flooding problems in the following key watersheds in Milwaukee: the Milwaukee River, the Root River and the Oak

Creek. In addition, although we are facing problems along the Menomonee River, I understand there is an existing study authority which may be utilized to look at that problem. We are requesting that this authority be reopened to allow the Corps to assess our problems in this watershed as well.

I would like to point out here that a prior Milwaukee River study authority had been deauthorized in accordance with Section 710 of P.L. 99.662. However, due to the recent flood events and flood damages incurred in the Milwaukee area we are requesting that this authority be given to the Corps to re-examine the current situation to determine whether there is a federal interest.

We have met recently with the local Corps District on these issues and have taken them on an inspection tour of the problem areas. As a result of our discussions, the Corps is presently studying a small scale flood control problem in our area under its Section 205 continuing authority.

We understand that the Corps' first step in reviewing a problem area - assuming study authority is provided - is to conduct a reconnaissance study and then if warranted, a feasibility study would be pursued, which would be cost shared by the District. We understand our obligations as a local sponsor for a flood control project under P.L. 99-662, and we stand ready to face up to these requirements.

Again, I thank you for the opportunity to present our testimony and I stand ready to answer any questions you may have.

GGSENATE.LTR

TESTIMONY
of
Mrs. Kay Horrell, Councilmember
Redondo Beach, California

Hearings on
Water Resources Development Act of 1988
Subcommittee on Water Resources, Transportation & Infrastructure
March 17, 1988

My name is Kay Horrell, and I am a member of the Redondo Beach, California, city council. I represent the district that includes King Harbor.

On behalf of the City of Redondo Beach, I want to thank the Committee for the opportunity to testify in support of legislation to amend the Water Resources Development Act of 1986. We are particularly interested in Section 809 of that Act which authorizes the Corps of Engineers to dredge and maintain King Harbor, raise the breakwater to 22 feet and to plan and design a project to raise the breakwater higher than 22 feet.

The Corps is nearing completion of the feasibility study and expects to commence preconstruction engineering and design work later this year. We are at a critical juncture for this project, especially in light of the January storm that severely damaged the north breakwater and many businesses and boats in the harbor. The storm brought to the fore certain issues that must be resolved before the harbor can be safely restored.

The harbor breakwater has been designated a hurricane and storm reduction project by the Corps and as such should qualify for 35 percent cost sharing as manadated by Section 103(c)(4) of the 1986 Act. However, Section 809 specifies 50 percent cost sharing for all improvements in King Harbor. The 50 percent cost sharing requirement was intended only for the dredging portion of Section 809. Cost sharing for the breakwater should be consistent with other storm reduction projects. While the City would appreciate the financial benefit of the lower cost sharing requirement for storm reduction projects, we are concerned about the non-federal maintenance responsibility of such a project. Because the authorization is for modification of existing breakwaters which are fully maintained by the federal government, it would be a logistic nightmare to assign maintenance responsibility for a project such as this. The City would therefore recommend that this project qualify for 35 percent local cost sharing but that maintenance remain a full federal responsibility.

Since 1980 storm damage in King Harbor has surpassed $25 million, over $17 million of which was sustained in the January storm. While a federal disaster was declared for public damages, no federal disaster assistance will be made available for private losses. All businesses within the harbor were damaged; some of the largest were completely destroyed. The damage is directly attributable to the deficiencies in the breakwaters. The City is losing more the $150,000 per month in revenue from these closed businesses, some of which will not reopen for years. The reserve fund, which had been set aside to meet our cost sharing requirement, has been depleted. Each storm threatens to only compound the damage. We would welcome the committee's support in expediting this project considering the emergency conditions existing in the harbor, even if a delay in non-federal cost sharing must be arranged to ensure that the improvements are made as quickly as possible.

In addition, the City would like to recommend that Section 809 be amended to authorize the Corps to construct the breakwaters higher than 22 feet, subject to a favorable report by the Chief of Engineers and approval by the Secretary of the Army. The 1986 Act only authorized planning and design work for this additional modification. But considering the fact that King Harbor has been frequently damaged by even minor storms, we believe it is wise to authorize the additional work.

Mr. Chairman, I would like to submit to the committee within two weeks specific amendment language which could be inserted into the committee's bill at the appropriate place. Because we are currently working with the Corps to better understand the options immediately available to us, we are not prepared to submit an amendment today.

I will be happy to answer any questions.

TESTIMONY OF EDWARD Y. HIRATA
DIRECTOR OF THE DEPARTMENT OF TRANSPORTATION
STATE OF HAWAII
BEFORE SENATE SUBCOMMITTEE
ON WATER RESOURCES, TRANSPORTATION, AND INFRASTRUCTURE
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
ON S.2100-WATER RESOURCES DEVELOPMENT ACT OF 1988

MARCH 16-18, 1988

Mr. Chairman and Members of the Committee, I am Edward Y. Hirata, Director of Hawaii's Department of Transportation. On behalf of Governor John Waihee, I would like to extend my appreciation for this opportunity to submit testimony on S. 2100.

Any law or issue which affects our ocean shipping systems is of vital importance to the State of Hawaii. We have no railroad or trucking alternatives servicing our islands. We are almost totally dependent on our ocean transportation system for our daily sustenance. The harbors and shipping networks are lifelines for the people of Hawaii and our U.S. Pacific Island neighbors.

We import 80% of all the goods we need, and 98% of the imports are transported by ocean shipping. In terms of overseas cargo, Hawaii imports almost twice what it exports, unlike most major U.S. ports where exports exceed imports. Each and every person in our Islands, including the resident military personnel, benefit from our harbors.

The State of Hawaii greatly appreciates your understanding of the situation facing the Islands as reflected by the Congressional action providing certain exemptions from the harbor maintenance tax to the non-contiguous areas of the United States in P.L. 99-662, the Water Resources Development Act of 1986.

Unfortunately, we believe during its rulemaking, the U.S. Customs Service has misinterpreted P.L. 99-662 as it relates to the movement of cargo in exempted areas. The U.S. Customs service has developed rules and regulation which impose a maintenance tax on cargo moving between the exempted jurisdictions, but waives this requirement for other domestic movements. P.L. 99-662 includes passengers as cargo in its exemption, but the U.S. Customs Service has interpreted this law to exclude passengers in its definition of commercial domestic cargo.

We believe this misinterpretation is best resolved by a technical amendment to clarify the law. We urge you to join your colleagues on the Senate Finance Committee to support such a technical amendment in the pending technical corrections bill.

In addition, we support the following provisions of S. 2100 which will amend P.L. 99-662.

Section 201 which provides for the costs of utility relocation incurred by the local sponsor to be credited to the additional 10% of project first cost payable to the Federal Government over a period not to exceed 30 years. This is a logical amendment since utility relocation costs are bona fide costs attendant to the project just as the costs for lands, easements, and rights-of-way which are now credited under the Act.

Section 206 requires the Corps to provide periodic project expenditure schedules to the local sponsors on request. This will greatly assist the local sponsors in monitoring the fiscal status of the project to which they have made a financial contribution.

The State of Hawaii generally supports Section 207 which modifies the required local share where there are direct and quantifiable benefits to the military. However, we respectfully request that this subcommittee consider expanding Section 207 to require that the Corps' benefit-cost formula include the benefits to the military for the use of U.S. Island ports.

The U.S. Islands are America's western most and southern most borders, and have considerable military strategic benefits for our Nation. Some of our Island ports currently share facilities or accommodate the military. Present practice separate strategic military benefits from the general commercial benefits, although the military and the community each benefit from increased safety resulting from the navigational improvement of the harbor.

We thank you for this opportunity to provide our views. We respectfully request your serious consideration and understanding of our Island situation in your national policymaking process.

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April 20, 1988

Honorable Daniel P. Moynihan, Chairman
Subcommittee on Water Resources,
Transportation & Infrastructure
Committee on Environment and Public Works
458 Senate Dirksen Office Building
Washington, D.C. 20510

Dear Senator Moynihan:

The Illinois Department of Transportation strongly supports a regular timetable for the authorization of water resources projects, and we appreciate your efforts towards this end by introducing S. 2100, the Water Resources Development Act of 1988. This legislation provides a needed opportunity to make technical revisions to the Water Resources Development Act of 1986 (PL 99-662) and to authorize other critically needed water resources projects.

On March 16, 17 and 18, you held hearings on S. 2100 to obtain comments on proposed technical amendments to PL 99-662 and on newly authorized projects. Enclosed with this letter is testimony on behalf of the Illinois Department of Transportation which we request be placed in the hearing record. The following projects are discussed in the testimony:

- Authorize the Chicagoland Underflow Plan for flood control.
- Amend the contract between the State of Illinois and the Corps of Engineers for water supply in Rend Lake.
- Authorize the Des Plaines River Wetlands Research Project.
- Credit for non-federal in-kind contributions for project feasibility studies.
- Reprogramming of funds for reconnaissance studies.
- Scope of Corps of Engineers reports on urban and rural flood reduction frequency.
- Full federal responsibility for operations and maintenance costs of fish and wildlife activities on federally managed lands.

- Retain the Saint Lawrence Seaway Development Corporation as an appropriation-financed agency.
- Filling of confined dredged material disposal facilities on the Great Lakes.
- Construct the Lower Ohio River navigation locks replacement project.
- Designate the North Branch of the Chicago River as a partially completed navigation project and as an inland waterway subject to the fuel tax authorized by the Inland Waterways Revenue Act of 1978.
- Clarify Corps responsibility for maintenance of breakwaters which separate Lake Michigan and the Chicago River.
- Deauthorize the Chicago River Turning Basin.

I appreciate your consideration of these projects that are vital to deep-draft and inland waterway navigation and to flood control and water supply in the State of Illinois.

Sincerely,

Gregory W. Baise

Gregory W. Baise
Secretary

Enclosure

TESTIMONY
OF
GREGORY W. BAISE, SECRETARY
ILLINOIS DEPARTMENT OF TRANSPORTATION
TO THE
SUBCOMMITTEE ON WATER RESOURCES,
TRANSPORTATION & INFRASTRUCTURE
OF THE
SENATE COMMITTEE ON ENVIRONMENT & PUBLIC WORKS
ON
S. 2100
THE WATER RESOURCES DEVELOPMENT ACT OF 1988

Introduction

The Illinois Department of Transportation strongly supports a regular timetable for the authorization of water projects, and we appreciate efforts by Senator Daniel Moynihan towards this end by introducing S. 2100, the Water Resources Development Act of 1988. This legislation provides a needed opportunity to make technical revisions to the Water Resources Development Act of 1986 (PL 99-662) and to authorize other critically needed water resources projects.

The purpose of this testimony is to provide comments and technical amendments to PL 99-662 and to propose several water resources project authorizations for inclusion in S. 2100. The projects and amendments are discussed in four areas, including Illinois water projects, technical amendments to PL 99-662, Great Lakes navigation, and inland waterways navigation. Background information is provided and, in cases, suggested legislative language is presented for possible amendments to S. 2100.

A. Illinois Water Projects

Authorization of the Chicagoland Underflow Plan

The Chicagoland Underflow Plan (CUP), an element of the Chicago Tunnel and Reservoir Plan, is designated to reduce flood damages in the combined sewer area of approximately 353 square miles serviced by the Metropolitan Sanitary District of Greater Chicago.

The primary flooding problem in the combined sewer area is basement flooding due to sewer backup. Approximately 500,000 housing structures are subject to basement flooding and about 170,000 structures are flooded to varying degrees on an annual basis. Average annual damages from floodwaters are estimated at $140 million. In addition, other problems related to combined sewer overflows include degradation of water quality, the periodic need to backflow polluted floodwater into Lake Michigan and sedimentation of navigation channels.

Part of the CUP project, a reservoir with a capacity of at least 1,050 acre-feet to store floodwaters in suburban communities near O'Hare Airport, was authorized under Section 401 of PL 99-662. The Chicagoland Underflow Plan, Illinois report by the Chief of Engineers recommends the construction of two flood control reservoirs in existing quarries, along with aquifer protection systems, aeration systems, grit removal systems and hydraulic structure connections to existing conveyance tunnels. One reservoir would be constructed in McCook, with a storage capacity of 32,100 acre-feet, and one would be constructed in Thornton, with a capacity of 24,200 acre-feet.

Because the construction of these reservoirs is an important element of the overall plan to relieve the flooding problem in the Chicagoland area, we request that S. 2100 be amended to authorize the Chicagoland Underflow Plan as recommended in the Chief of Engineers report. The project should be subject to the cost-sharing provisions as contained in Section 1173 of PL 99-662, which specifically states that the federal cost share of the Chicago Tunnel and Reservoir Project shall be 75 percent. This would also be consistent with Section 103 of PL 99-662 which provides a minimum non-federal cost share of 25 percent for flood control projects.

Rend Lake Water Supply

The State of Illinois has contracted with the Corps of Engineers for the use of storage space for water supply in Rend Lake on the Big Muddy River in southern Illinois. Section 1137 of PL 99-662 authorized the Secretary of the Army to amend the contract to relieve the state of the requirement to make annual payments for that portion of the operation and maintenance cost applicable to future water supply storage, but the relief would apply for only five years or until the storage space is used, whichever occurs first, and would apply in the proportion that the storage space is used for water supply purposes.

The Water Supply Act of 1958 (PL 85-500) provides for the payment for water supply storage space by non-federal interests; however, the Act requires that the payment apply solely to the storage space actually utilized, not to future water supply storage. However, under the provisions of Section 1137 of PL 99-662, the State of Illinois will again be required to pay for unused storage supply in Rend Lake after five years.

We request that S. 2100 include a provision that would further amend the contract between the State of Illinois and the Corps of Engineers by specifying that the state be required to pay only for water supply storage space at such time and in such amount as is actually used.

Des Plaines River Wetlands Research Project

Increasing development along the nation's rivers, lakes and coastal areas is causing a rapid depletion of natural wetland areas. The maintenance and restoration of wetland areas is in the long-term interest of the nation, as wetlands provide a habitat for fish, wildlife and plant species; a control and cleansing mechanism for non-point sources of pollution before they enter inland and coastal waters; sediment control; flood control; and natural settings within the urban environment.

Due to the unique ecological value of wetland areas and the need for research on methods to restore wetlands to their natural state, it would be in the national interest to establish a research project that involves the restoration and rehabilitation of a degraded wetland site. Such a project has been initiated along a 2.8 mile stretch of the upper Des Plaines River, flowing through the intensively developed northeastern Illinois metropolitan area. The Des Plaines River is ideally suited for such a research project as it has suffered severe loss of its natural wetland area and has serious water quality problems resulting from extensive modifications of the watershed and the river channel itself. Channelization and levee construction have reduced the floodplain which has contributed to increased downstream flooding.

It is estimated that the total cost of the Des Plaines River Wetlands Research Project will be about $10.2 million. When completed, the project will have involved the reconstruction of the wetland by rebuilding the river channel, irrigation of the floodplain with river water and introduction of a variety of appropriate plants to create a diverse habitat. The research project will culminate in detailed design procedures and management programs for recreating and maintaining wetlands, which will provide a prototype for wetlands restoration throughout the nation.

Work on the Des Plaines River Wetlands Research Project was initiated in 1983 following a contribution of a 450-acre site by the Lake County Forest Preserve District. As of February 4, 1988, a total of $5,122,255 had been expended on the Research Project, including $3,241,255 in cash and $1,881,000 in in-kind contributions. Federal participation included grants of $1,008,280 from the Fish and Wildlife Service and $286,000 from the Environmental Protection Agency, and EPA provided $6,000 in in-kind services, for total federal participation of $1,300,280. State and local government agencies contributed $2,801,000 and private involvement, primarily by companies and foundations, totalled $1,020,975.

At present, an additional $5.1 million is needed to complete the Des Plaines River Wetlands Research Project. While no cost-sharing formulas have been enacted by Congress for such research projects, it is suggested that a 60 percent non-federal share and a 40 percent federal share would be reflective of the local benefits of reduced flooding, improved habitat and environmental quality, and of the national benefits derived from the research findings and the application of restoration techniques to other wetlands projects. Using this cost-sharing formula, $3.1 million in non-federal funds and $2.0 million in federal funds would be needed to complete the Research Project.

On March 4, 1988, Senator Alan Dixon introduced S. 2144, and on March 24, 1988, Congressmen John Porter, Philip Crane and J. Dennis Hastert introduced H.R. 4253, which authorize the Secretary of the Army to construct and engage in other activities for the restoration of wetlands along the Des Plaines River and authorize $2.2 million in federal funds for the Secretary to conduct the program. As the completion of the Des Plaines River Wetlands Research Project would provide unique national benefits with applications to similar restorations throughout the nation, this Project should be included in the water resources authorization bill. We request that S. 2100 be amended, using the language in S. 2144 and H.R. 4253, to authorize the Des Plaines River Wetlands Research Project.

B. Technical Amendments to PL 99-662

Credit for In-Kind Non-Federal Contributions to Project Feasibility Studies

Section 105(a)(1) of PL 99-662 specifies that the Secretary of the Army shall not initiate any feasibility study for a water resources project until non-federal interests agree, by contract, to contribute 50 percent of the study cost during the period of the study. Not more than 50 percent of the non-federal contribution can be made by the provision of services, materials, supplies or other in-kind services.

The Corps of Engineers has interpreted Section 105(a)(1) to require that the in-kind services occur during the period of the feasibility study after the contract is signed. This precludes the use of work done by the non-federal sponsor during the reconnaissance phase that is essential and necessary for the feasibility study and could expedite that study if done during the reconnaissance phase.

This provision should be modified to provide a credit for in-kind contributions by non-federal interests for the costs of project reconnaissance studies toward the non-federal cost share of project feasibility studies. Specifically, the amount of any in-kind contribution for a reconnaissance study, as approved by the District Engineer, would be credited against the 50 percent non-federal share of the cost of the feasibility study.

This proposed change, by reducing the overall non-federal costs of project feasibility studies, will enable non-federal interests to undertake a broader range of reconnaissance studies to make initial determinations of the need for and feasibility of proposed water resources projects. Suggested legislative language to amend S. 2100 is as follows:

Section ___. Section 105(a)(1) of the Water Resources Development Act of 1986, PL 99-662, is amended to read as follows:

The Secretary shall not initiate any feasibility study for a water resources project after the date of enactment of this Act until appropriate non-Federal interests agree, by contract, to contribute 50 percent of the cost for such study.~~during the period of such study.~~ Not more that one-half of such non-Federal contribution may be made by the provision of services, materials, supplies, or other in-kind services necessary to prepare the feasibility report. The non-Federal contribution may include services, materials, supplies, or other in-kind services furnished during the reconnaissance phase if that contribution is approved by the District Engineer. Non-Federal interests shall receive credits for such contribution made during the reconnaissance phase only if the feasibility phase is subsequently undertaken by the Secretary.

Reprogramming of Funds for Reconnaissance Studies

Section 905(b) of PL 99-662 requires that prior to initiating any feasibility study under Section 905(a) of the act, the Secretary shall first perform, at federal expense, a reconnaissance study. The purpose of the reconnaissance study is to identify potential solutions to water problems in sufficient detail to enable the Secretary to determine if project planning should proceed to the feasibility study phase.

There may be instances wherein critical water resources problems arise, in which cases it would be desirable if the Secretary had the authority to reprogram available General Investigations funds, without prior Congressional approval, in order to initiate reconnaissance studies for such problems. This authority to reprogram available funds would be allowed if the following conditions existed:

a) The problem is of such a nature that it would be unwise to delay the reconnaissance study to await funding through the normal appropriation process.

b) A Congressional authority already exists under which the reconnaissance study can be completed.

c) Prior to authorizing a reprogramming action, the Secretary notifies the House and Senate Appropriations Committees of his intention.

The Secretary's authority to reprogram funds for reconnaissance studies would be limited to a maximum of $500,000 per study in any fiscal year.

We request that S. 2100 be amended to provide the Secretary with the authority to reprogram funds for reconnaissance studies.

Scope of Corps Reports on Urban and Rural Flood Control Frequency

Section 914 of PL 99-662 states that the Secretary of the Army, in the preparation of feasibility reports for projects for flood damage prevention in urban and rural areas, may consider and evaluate measures to reduce or eliminate damages from flooding without regard to frequency of flooding, drainage area, and amount of runoff. This section applies only to projects, or separable elements thereof, with a federal cost share of less than $3 million. (emphasis added)

The above provision was enacted to increase the scope of Corps feasibility studies for flood damage reduction projects. Under guidelines established by the Corps (33 CFR 238), criteria were identified to distinguish between urban flood damage reduction measures, which could be undertaken by the Corps under its flood control authorities, and storm sewer systems which are a local responsibility. The Corps' guidelines established a cutoff point to determine the extent of federal participation in flood damage reduction projects. The federal role was narrowed to those flood damage problems downstream from the point where the flood discharge in natural streams or modified natural waterways is greater than 800 cubic feet per second (cfs) for the 10-percent flood under conditions expected to prevail during the period of analysis. Flood damage problems above this point were considered local storm drainage to be addressed as part of a storm sewer system.

The Corps is involved in a study of the 800 cfs policy to determine if it is being applied equitably. Preliminary results from that study indicate that in some parts of the country, drainage areas of less than 1 square mile will produce a 10-year frequency flow of 800 cfs, while in other parts of the country, it may take 35 square miles to produce the same flood discharge. The policy as presently written is discriminatory.

If Section 914 is to effectively expand the scope of Corps studies of flood reduction measures, it is imperative that the Corps be required to consider and evaluate flood control measures without regard to flood frequency, drainage areas and amount of runoff and that no dollar limit be placed on the cost of the projects for which the expanded control measures are to be evaluated. The report language that accompanied this section indicated that the Secretary shall consider and evaluate flood control measures. Following is suggested legislative language to amend Section 914.

Section ___. Section 914 of the Water Resources Development Act of 1986, PL 99-662, is amended to read as follows:

In the preparation of feasibility reports for projects for flood damage prevention in urban and rural areas, the Secretary ~~may~~ shall consider and evaluate measures to reduce or eliminate damages from flooding without regard to frequency of flooding, drainage area, and amount of runoff. ~~This section shall apply with respect to any project, or separable element thereof, the Federal share of the cost of which is less than $3,000,000.~~

Full Federal Responsibility for Operations and Maintenance of Fish and Wildlife Activities on Federally Managed Lands

Section 906(e) of PL 99-662 authorized cost sharing for activities to enhance fish and wildlife resources. In the case of activities located on lands managed by the federal government as a national wildlife refuge, the federal government pays the first costs of enhancement; however, non-federal interests are required to pay 25 percent of operations and maintenance (O&M) costs for these activities on federally managed lands.

The requirement that non-federal interests provide 25 percent of the O&M costs of enhancement activities on federally managed refuge lands, that are managed for national purposes, is of questionable propriety. Since the federal government is required, under the provisions of Section 906(e) to pay the full costs of the activities to enhance fish and wildlife resources on federally managed lands, it seems inconsistent and inappropriate that such enhancement projects should require non-federal support for the O&M costs.

The following legislative language is suggested to amend S. 2100 to remove this inconsistent provision for O&M of fish and wildlife enhancement projects on federally managed lands.

Section _____. Section 906(e) of the Water Resources Development Act of 1986, PL 99-662, is amended to read as follows:

The non-Federal share of operation and maintenance, and rehabilitation of activities to enhance fish and wildlife resources shall be 25 percent, except when such activities are located on lands managed as a national wildlife refuge.

C. Great Lakes Navigation

Retain the Saint Lawrence Seaway Development Corporation as an Appropriation-Financed Agency

It is the goal of Great Lakes maritime interests to eliminate the payment of tolls on the St. Lawrence Seaway. Since its completion in 1959, the Seaway has been the only domestic deep-draft waterway subject to tolls on cargoes and vessels. This financial burden has been a contributing factor to the decline of international shipping via the Great Lakes/Seaway system.

To achieve the goal of eliminating the Seaway tolls, Great Lakes maritime interests made the elimination of the U.S. tolls the first objective. This was achieved by enactment of the Water Resources Development Act of 1986, PL 99-662, which authorized a rebate of all U.S. tolls on the St. Lawrence Seaway. Under the provisions of the Act, the Saint Lawrence Seaway Development Corporation collects the U.S. tolls and transfers the tolls to the

Treasury Department for deposit in the Harbor Maintenance Trust Fund. Congress annually is to make appropriations from the Trust Fund to pay 100 percent of Seaway operations and maintenance costs and the toll rebates. In addition, the Act directed the Secretary of State, in consultation with the Secretary of Transportation, to initiate discussions with the government of Canada on reducing or eliminating all Seaway tolls within two years of the date of enactment.

According to the St. Lawrence Seaway 1986 Traffic Report, the U.S. collected $9.0 million in tolls in 1985 and $9.2 million in 1986. According to the Corporation, the U.S. collected about $9.5 million in tolls in 1987. This amount was rebated to Seaway shippers, representing a cost savings and a strong inducement to shippers to increase their overseas shipments via the Seaway. More significantly, the Seaway Traffic Report indicates that Canada collected $47.8 million in tolls in 1985 and $52.0 million in 1986. Were Canada to eliminate its Seaway tolls, the total savings to shippers would be over $60 million annually.

Prior to and following enactment of PL 99-662, the Corporation expressed concerns with the provisions that make the Corporation's operations subject to appropriations from the Trust Fund. The Corporation has proposed, instead, that the Act be amended to allow the Corporation to retain the Seaway toll revenues and to carry out its programs without appropriations from the Trust Fund. This was discussed by one of the panels that participated in the hearings on S. 2100 held on March 16, 1988.

If Great Lakes maritime interests are to achieve the goal of eliminating all Seaway tolls, it will be necessary for both the Saint Lawrence Seaway Development Corporation and its Canadian counterpart, the Seaway Authority of Canada, to become appropriation-financed agencies instead of toll-financed agencies. The implication of toll-financing is that it requires that tolls be charged and collected, and this financing mechanism would effectively preclude the elimination of the Seaway tolls. The U.S., through Section 210 of PL 99-662, changed the Seaway Corporation from a toll-financed to an appropriation-financed agency.

Another concern with the proposal by the Corporation to retain the tolls is the strong possibility that such a change in the Act, which would stop payments of the tolls into the Trust Fund, would terminate payments of the rebates from the Trust Fund. The primary source of funds for the Trust Fund is the ad valorem charge of .04% per dollar value of cargoes handled at deep-draft ports. It is highly improbable that port interests on the tidewater coasts will accept a change in the Act that would pay for the rebates of Seaway tolls from receipts of ad valorem charges in the Trust Fund.

The second objective of efforts by Great Lakes maritime interests to eliminate Seaway tolls involves the elimination of the Canadian tolls. To accomplish this step, it is imperative that the discussions mandated by PL 99-662 be initiated as soon as possible. These discussions should include a recommendation that, similar to the legislation enacted by the U.S., Canada consider changing the Seaway Authority of Canada from being a toll-financed agency to an appropriation-financed agency.

Filling of Confined Dredged Material Disposal Facilities on the Great Lakes

Under the provisions of Section 123 of the River and Harbor Act of 1970, PL 91-611, the Secretary of the Army was authorized to construct, operate and maintain contained disposal facilities (CDFs) of sufficient capacity for a period not to exceed 10 years. The program was created in response to a determination by the Corps of Engineers that the bottom sediments of commercial rivers and harbors on the Great Lakes were polluted and that a 10-year program to confine the dredged materials would be desirable to abate water pollution.

In September of 1985, the Corps made a determination that the provisions in PL 91-611 provided the Corps with the authority to continue disposing of dredged material in CDFs beyond the 10-year period. Then, in August 1986, in response to a request from Congressman Les Aspin of Wisconsin, the General Accounting Office conducted a review of the status and use of CDFs on the Great Lakes constructed under PL 91-611.

Based upon Corps' records, the GAO reported that a total of 24 CDFs were built by the Corps on the Great Lakes under the authority of Section 123 of PL 91-611. As of May 1985, only two of the facilities were 100 percent filled, 10 facilities were at least 50 percent filled, 11 facilities were less than 50 percent filled, and one facility had only recently been completed. In addition, the Corps determined that 17 of the CDFs would be useable for periods of 10 years or more.

The GAO report concluded that "Section 123, Public Law 91-611, limits the use of disposal facilities to only a 10-year period and does not authorize the Corps to continue using ... Great Lakes confined disposal facility beyond the 10-year period." However, the GAO acknowledged that many of the CDFs will have unfilled capacity after the expiration of the 10-year program, and the report suggests that the Corps seek legislation to extend the operational lives of the CDFs on the Great Lakes.

In a letter to Congressman James C. Wright, Speaker of the House, from Robert K. Dawson, Assistant Secretary of the Army, Civil Works, dated April 1, 1987, draft legislation was furnished to amend Section 123 of PL 99-611 to allow the Corps to continue to fill CDFs until the Secretary determined that a facility is no longer needed for the purpose or is completely full. This provision was included in S. 2101, also entitled the Water Resources Act of 1988, which was introduced by Senator Robert Stafford on February 26, 1988 following the introduction of S. 2100.

In light of the continuing need to dredge commercially navigable rivers and harbors on the Great Lakes and the continued existence of polluted bottom materials, we urge that S. 2100 be amended to include the provisions in Section 7 of S. 2101 to allow the Corps to continue to dispose of these dredged materials in existing CDFs.

D. Inland Waterways Navigation Projects

Lower Ohio River Navigation Project

The State of Illinois supports the construction of the project for inland navigation on the Lower Ohio River that involves replacement of existing Locks and Dam 52 and 53 with a single new facility with twin 1200' x 110' locks and a navigable pass dam, located near Olmsted, Illinois. This project will provide Illinois and the other Ohio River Basin and Mississippi River Basin states with a modern, efficient and dependable navigation facility on the Lower Ohio River.

Both Locks and Dams 52 and 53 were constructed in 1929, each with a single 600' x 110' lock and with navigable wicket dams. The locks are approaching 60 years of age, the upper limits of their useful lives. In response to increases in barge traffic that began to occur in the 1960's, temporary-type locks measuring 1,200' x 110' were constructed at Locks 52 in 1969 and at Locks 53 in 1980. The temporary lock at 52 has exceeded its 15-year design life and is experiencing frequent maintenance shut-downs. Other problems at these locks are the result of the original mass concrete construction with no steel reinforcing and of 100-year old wicket dam technology which poses operational safety hazards.

Recognizing the importance of the Olmsted locks replacement project, the Inland Waterways Users Board in the "First Annual Report to the Secretary of the Army and the United States Congress", recommended that the project be considered a Category 1 Project that should be accelerated consistent with maximum Corps capabilities or for which increased capabilities would be appropriate.

The Corps has determined, if the Olmsted locks project is authorized by Congress this year, that construction could begin in 1993 and be completed by the year 2000. Because of the need to replace the aging Locks and Dams 52 and 53, it is imperative that this locks project be authorized in any omnibus water resources bill considered this year by Congress.

Exemption of the North Branch of the Chicago River from Deauthorization

Section 1001(b)(1) of PL 99-662 directed the Secretary of the Army to transmit to Congress a list of unconstructed projects or unconstructed separable elements of projects that were authorized but had received no obligations during the preceding 10-year period. Any project on this list would be deauthorized after December 31, 1989 if no funds had been obligated before that date.

On November 16, 1987, acting Assistant Secretary of the Army John S. Doyle, Jr. transmitted to Congressman James C. Wright, Speaker of the House, the report required by this Section. Among the projects listed in the report was the North Branch of the Chicago River, authorized by the River and Harbor Act of July 24, 1946. The act provided for a nine-foot deep channel from North Avenue to Addison Street in Chicago, Illinois, a distance of about 3-1/2 miles. From North Avenue to Belmont Avenue, the channel was to be 50 feet wide, and from Belmont to Addison, the channel was to be constructed to within

30 feet of existing bulkheads and riverbanks.

Prior to passage of the 1946 authorization act, this section of the North Branch of the Chicago River had been dredged and straightened by the City of Chicago and the Metropolitan Sanitary District of Greater Chicago (MSDGC) to a depth of 10-1/2 feet and a width of 90 feet. No federal funds were expended either prior to or following enactment of the 1946 act to construct to the North Branch project. In addition, no federal funds have ever been expended to maintain the project.

Three private companies currently operate barge terminals on this section of the river. Material Service Corporation and Monarch Asphalt Company receive sand and gravel, and Cometco Scrap Metal Corporation ships scrap metal. These companies shipped a total of 300,000 tons by barge in 1986.

Two barge lines operate in the North Branch. Both barge lines informed the Illinois Department of Transportation that they have paid the fuel tax authorized by the Inland Waterways Revenue Act of 1978 for their barge operations on the North Branch, despite the fact that the North Branch is not specifically designated in Section 206 of the act as a waterway subject to the fuel tax.

Over time, the depth of the navigation channel of the North Branch has been reduced by sedimentation and runoff, and there is the likelihood that dredging may soon be needed to maintain barge operations.

We request that S. 2100 be amended to ensure that the North Branch of the Chicago River continues to function as a commercially navigable inland waterway. This can be accomplished by designating the North Branch, to the channel dimensions constructed by MSDGC with a 90-foot width and at least a 9-foot depth, as a partially completed federal navigation project and by designating the North Branch as a waterway subject to the fuel tax authorized by Section 206 of the Inland Waterways Revenue Act of 1978. This would ensure, if needed at some time in the future, that the Corps could operate and maintain the waterway and perform needed dredging.

Clarify Corps Responsibility for the Maintenance of Breakwaters that Separate Lake Michigan and the Chicago River

There is a north-south U.S. government breakwater at the Chicago River Turning Basin which separates Lake Michigan from the Chicago River. This breakwater was constructed by the Corps in 1874 as part of a navigation project. At that time, the purpose of the breakwater was to protect navigation in Chicago Harbor and not for the purpose of separating the Lake from the Chicago River. During the 1930's and 1940's, the Metropolitan Sanitary District of Greater Chicago constructed the Chicago River Controlling Works Locks and also made improvements to the U.S. government breakwater to separate the Lake from the River. The locks and associated improvements are essential in maintaining navigation between the Illinois Waterway and the Great Lakes.

Section 107 of the 1983 Energy and Water Appropriation Act, PL 97-88, intended to transfer operation and maintenance responsibilities for these kinds of structures on the Chicago Sanitary and Ship Canal from the State of Illinois to the Corps. As a result of confusion over what that section directed the Corps to do, PL 98-63 contained language clarifying Section 107 of PL 97-88 such that "Section 107 of PL 97-88 pertaining to maintenance and operation of the Chicago Sanitary and Ship Canal of the Illinois Waterway in the interest of navigation includes a control structure and lock in the Chicago River and other facilities as are necessary to sustain through navigation from Chicago Harbor and Lake Michigan to Lockport and the Des Plaines River." However, PL 98-63 did not clarify the Corps' responsibility for maintenance of the breakwater structure.

Following is suggested legislative language to amend S. 2100 to once and for all remove any confusion over the Corps' operation and maintenance responsibilities for those structures and breakwaters which are associated with the maintenance of navigation from Chicago Harbor and Lake Michigan to Lockport on the Des Plaines River.

Section _____. Section 107 of Public Law 97-88 pertaining to the maintenance and operation of the Chicago Sanitary and Ship Canal of the Illinois Waterway in the interest of navigation includes all breakwaters which separate Lake Michigan from the Chicago River.

Deauthorize the Chicago River Turning Basin

Legislation should be enacted to deauthorize a remaining portion of the inner basin in Chicago Harbor, commonly known as the Chicago River Turning Basin. This Turning Basin was originally constructed to provide deep-draft vessels a place to turn around before entering or leaving the Chicago River Controlling Works Locks. This Turning Basin is no longer required by navigation using the Chicago River. The City of Chicago and the Chicago Park District have expressed an interest in expanding the recreational boat harbor immediately south of the Turning Basin. Before this can occur, it will be necessary that this area be deauthorized as part of the Chicago Harbor navigation project.

It is requested that S. 2100 be amended to deauthorize the remaining portion of the inner basin in Chicago Harbor, known as the Chicago River Turning Basin. Following is suggested legislative language.

Section _____. The inner basin of Chicago Harbor, Illinois, known as the Chicago River Turning Basin, authorized by the Act entitled, "An Act making appropriations for the repair, preservation, and completion of certain public works on rivers and harbors, and for other purposes, for fiscal year ending June 30th, 1871" approved July 11, 1870 (16 Stat. 223, 226) is not authorized after the date of enactment of this Act.

Testimony of New York State Department of Environmental Conservation
Before the
U.S. Senate Water Resources, Transportation
and Infrastructure Subcommittee

March 22, 1988

The New York State Department of Environmental Conservation appreciates this opportunity to comment on S 2100, The Water Resources Development Act of 1988.

We wish to commend the sponsors of the bill for recognizing the need to return to a regular timetable for authorizing new Corps of Engineers water resources projects every other year. The water resources needs of the State of New York will be best served by returning to such a timetable.

We would like to address two amendments to current law as follows:

Section 204

This section amends the Water Resources Development Act of 1986 to require that non-Federal sponsors of shoreline protection projects agree to comply with and participate in applicable flood plain management and flood insurance programs prior to project construction. New York strongly supports this amendment.

Section 301

This section amends the Water Resources Development Act of 1974 with respect to the New York Harbor Drift Removal Program by changing the authorized cumulative program ceiling of $30.5 million to an authorized, on-going annual ceiling of $6 million. To date, only two reaches of work under the program have been completed in New York and one additional reach, known as Brooklyn I, is 70% complete. The completed work has already produced major returns in reducing risks to shipping by removing sources of floating drift and stimulating harbor redevelopment. For example, the Brooklyn I reach will have cost $4.2 million when completed. Already it has stimulated a commitment by the Port Authority of New York and New Jersey to make a direct investment of $27 million in construction of a new fish port.

The program is a very important one to New York and we enthusiastically support the amendment made by this section.

Additional Amendment

I will next address the critical need for an additional amendment to the Water Resource Development Act of 1986, specifically Section 914 which addresses the so called "800 cfs rule". This rule promulgated as ER 1165-2-21 by the Chief of Engineers in May 1978 was purported to provide a means of distinguishing between damages caused by inadequate storm drainage facilities and damages due to riverine flooding. Since the promulgation of the regulation, the Corps of Engineers has either discontinued or failed to initiate studies of flood problems in fifteen locations in New York because they failed to meet the drainage area and/or the discharge frequency criteria imposed by the regulation. Prior to the regulation, most of these areas would have been eligible for Federal assistance.

The Joint Explanatory Statement of the Committee of Conference on H.R. 6 properly recognizes that drainage area and amount of discharge have no direct relation to the amounts of flood damages which may be inflicted. It is clear from the explanatory statement that it was the intention of the Committee on Conference that the Secretary shall consider and evaluate measures to reduce or eliminate damages from flooding without regard to frequency of flooding, drainage area, and amount of run off.

Unfortunately, Section 914 of the bill as passed reads, "the Secretary may" rather than the "Secretary shall". The Secretary has chosen to interpret this wording as giving him discretion in the matter rather than a mandate.

I urge the subcommittee to take appropriate action to include in S 2100 an amendment to Section 914 of PL 99-662 to change the wording to the "Secretary [may] shall".

Water Supply Needs

Water has no higher value than as drinking water. However, developing the source and moving it to where it's needed is expensive. The cost can be mitigated if water supply facilities are better planned and managed.

Of immediate concern are the financial and institutional arrangements of supplying water to southeastern New York. In this regard additional effort is required to identify the impacts that various source development and water management alternatives will have on the region's population, as well as evaluate the impact withdrawals will have on the location of salt water line in the Hudson River estuary. The amounts of water that can be withdrawn from the Hudson River estuary without adversely impacting the area, require a multi-jurisdictional cooperative effort. In this regard, we support a $400,000 authorization to help develop the initiative.

Santa Clara Valley Water District

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SAN JOSE, CALIFORNIA 95118
TELEPHONE (408) 265-2600

AN AFFIRMATIVE ACTION EMPLOYER

Statement

in

Support of the

Coyote/Berryessa Creek Project

Before the

Committee on Environment and Public Works

Subcommittee on Water Resources, Transportation and Infrastructure

Senator Daniel P. Moynihan
Chairman

By

Santa Clara Valley Water District
San Jose, California

March 16, 1988

COYOTE AND BERRYESSA CREEKS

On April 1st of this year the Board of Engineers for Rivers and Harbors is expected to give its support to the proposed flood control project for Coyote and Berryessa Creeks.

The Water Resources Development Act of 1986 (PL 99-662) gave Pre-construction Authorization (planning, engineering and design) to the Coyote/Berryessa Creek Project. The Corps of Engineers has completed its planning of flood control improvements to Coyote and Berryessa Creeks in Santa Clara County, California, and is recommending a $35.7 million project. Berryessa Creek is a tributary of Coyote Creek and both of these are part of the Guadalupe River and Adjacent Streams Project and Study which was authorized and has been in progress since 1941.

The flood problem persists: most recently, Coyote Creek overtopped its banks in 1982 and again in 1983 causing evacuation of hundreds of people and many millions of dollars in damage. The plight of the flooded community of Alviso, part of the City of San Jose, made national network news during those flood events.

STATUS

The Coyote/Berryessa Creek project has advanced to final approval stages: As described above, the project is expected to receive the approval of the Board of Engineers for Rivers and Harbors on April 1, 1988. Assuming construction authorization can be achieved through S 2100, construction funding can then be appropriated and construction could begin as early as 1991. A more detailed calendar showing the history and future of the project follows.

BACKGROUND

The Guadalupe River and Adjacent Streams Study authorization includes the Guadalupe River, Coyote Creek and Berryessa Creek. The Guadalupe River and Coyote Creek (and its tributary Berryessa Creek) are the two major waterways that flow through the highly urbanized area of Santa Clara County, California. Historically, they have flooded the downtown areas of San Jose, Alviso and Milpitas beyond local capability to prevent. Flood damages on Coyote Creek would be $114 million during the 1% flood event to the north San Jose and Milpitas area. Coyote Creek has caused damages amounting to several million dollars, overbanking in April 1982 and again in March 1983. Hundreds of people were forced to evacuate their homes where floodwaters stood for many days.

On Berryessa Creek there is the potential for $20.2 million in damages to private homes and businesses from a 1% flood. Flood damages were sustained during the 1983 floods on Berryessa Creek as on Coyote Creek.

The probability of such floods occurring before implementation of flood prevention measures is quite high. A 50-year flood has an 18 percent chance of occurring during a 10-year period; a 100-year flood has about 10 percent chance of occurring during this same period. There is strong potential, therefore, that a damaging flood will occur before the problem can be resolved.

Coyote Creek

Coyote Creek has the largest watershed in Santa Clara County draining all of the east foothills including portions of the Cities of San Jose and Milpitas.

Flooding has been experienced many times on Coyote Creek prior to construction of Coyote and Anderson Reservoirs, including occurrences in March 1903, January 1906, December 1906, January 1909, March 1911 (maximum recorded), February 1917, February 1922, January 1923, February 1926, February 1927, March 1930 and December 1931.

Since 1950 the tandem operation of Coyote and Anderson Reservoirs has reduced the frequency of flooding. Table 1 lists discharges that have occurred since the construction of Anderson Reservoir in 1950.

TABLE 1

COYOTE CREEK NEAR ANDERSON RESERVOIR (MADRONE) HIGHEST FIVE DISCHARGES SINCE COMPLETION OF ANDERSON AND COYOTE RESERVOIRS

Date of Crest	Discharge(cfs)	Order of Magnitude
3 April 1958	5,750	1
25 February 1969	3,600	3
2 April 1974	985	5
1 April 1982	3,200	4
1 March 1983	4,380	2

The inadequate and unstable levees which now exist are providing very little and uncertain protection to the community of Alviso and the Rincon de los Esteros Redevelopment Area in San Jose and the Milpitas Redevelopment Area east of the creek. These levees do not meet, and were never intended to meet, any minimum flood control criteria for design, construction or maintenance. The reliability of these levees is questionable and poses a great potential hazard to adjacent development. It was their overtopping and subsequent failure which was responsible for much of the flood damages in 1982 and 1983. Over 1600 residences, 800 mobile homes, and 250 commercial and industrial establishments are subject to a potential catastrophic failure. The potential flood depths and flood damages which could occur from Coyote Creek are:

Frequency	Flow-cfs	Depths of Flooding	Single Flood* Damage
100-Year	14,500	0 to 8.00	$114,000,000

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* Coyote and Berryessa Creeks Interim Feasibility Report and EIS, November 1987.

Coyote Creek will flood on an average of once every four years.

The proposed project will include construction of levees and excavation of a parallel bypass channel. An extensive revegetation plan is included as mitigation.

The cost of constructing a project from the baylands upstream four miles to Montague Expressway is estimated at $26.5 million (little to no right of way costs are anticipated). The benefit-to-cost ratio is 1.9. The non-federal cost ($6.6M) includes traditional elements (right of way, relocations) plus cash for a minimum of 25% of the total project cost.

The draft feasibility study and EIS was circulated for public review in May 1987. A public meeting was held in June 1987. The final document was published in November 1987.

Berryessa Creek

Berryessa Creek is a major tributary of Coyote Creek and drains much of the City of Milpitas and a portion of the City of San Jose.

Initially, the District applied in January 1981 for federal assistance under the Section 205 program of the 1948 Flood Control Act.

The channelization project is intended to protect portions of the Cities of Milpitas and San Jose from flood damages. Nearly all the estimated damages would be in the developed areas bounded by Lower Penitencia Creek on the west, Berryessa Creek on the east, Calaveras Boulevard and Lower Penitencia Creek on the north and Montague Expressway on the south. The potential flood depths and flood damages which could occur from Berryessa Creek are:

Frequency	Flow-cfs	Depths of Flooding	Single Flood Damage
100-Year	4,000	0 to 3.0	$20,179,000*

---

* Coyote and Berryessa Creeks Interim Feasibility Report and EIS, November 1987.

Berryessa Creek will flood on an average of once every four years.

The project, as now envisioned, will consist primarily of trapezoidal concrete lining. There will be set-back levees and floodwalls near Messina Drive to preserve this environmentally sensitive area. Sediment control structures will be part of the project. Landscaping will be done for mitigation of project impacts.

The cost of the project is estimated at $9.2 million. The benefit-to-cost ratio is 13. The non-federal cost ($2.3M) includes traditional elements (right of way, relocations) plus cash for a minimum of 25% of the total project cost. The non-federal costs would be partially reimbursed from the State Department of Water Resources.

In June 1984 the study was transferred to the San Francisco District to be completed jointly with Coyote Creek under the Guadalupe River and adjacent streams authorization.

STUDY HISTORY

The Corps of Engineers' study of flood solutions to Coyote Creek has a long history. Although authorized by Congress in 1941, the flood control investigation for the Guadalupe River and Adjacent Streams began in 1948. It was suspended in 1950 due to the Korean conflict, resumed again in 1955 and, in 1968, culminated in a recommendation that at that time there was no flood control plan that, from a federal standpoint, was economically justified. In 1971, the local community requested the Corps of Engineers to reactivate its earlier study in light of additional project benefits that had been identified. The Plan of Study was completed in 1973. The initial problem definition and alternative screening was completed in 1974. More detailed problem definition and alternative studies for the Guadalupe River and Coyote Creek were completed in 1978. The third phase, study of freshwater flooding in the Baylands, was completed in 1979. The Stage 2 report was completed for the combined Guadalupe River, Coyote Creek and Baylands. The report at that time established the financial feasibility and federal interest in the Guadalupe River. In light of severe flooding in 1982 and 1983, the Corps focused its study on Coyote Creek to address the inadequate level of protection provided by unstable levees. The study also includes Berryessa Creek, a major tributary to Coyote Creek.

In an effort to accelerate the completion of this overall program, the local community through the Santa Clara Valley Water District has provided a substantial amount of technical and financial assistance since 1972. Special planning studies have been completed by the Santa Clara Valley Water District for inclusion into the Corps' studies at a local cost of over $430,000. Both projects received authorizations under the Water Resources Development Act of 1986; the Guadalupe Project for Construction and the Coyote/Berryessa Project for Preconstruction (planning, engineering and design).

The severe flood problem and the ominous threat of future damages has forced the local community to initiate a local project on Coyote Creek in anticipation of future federal participation. Nearly $2.7 million in local funds have been spent on the planning, design and construction of improvements on Coyote Creek to date, which are planned for incorporation into the federal project.

The schedule for the joint Coyote/Berryessa Study:

District 205 Application on Berryessa	January 1981
Corps Recon Report on Berryessa	September 1981
District request of Corps to reevaluate Stage II Coyote report for levee integrity	November 1982
Corps Detailed Project Report (Draft DPR) on Berryessa 205 study	March 1984
Request by SCVWD to transfer Berryessa study from Section 205 to Guadalupe River Authorization	April 1984
Berryessa study transferred from Sacramento to San Francisco District	June 1984
Preconstruction Authorization (PE&D) in H.R. 6	November 1986
Draft feasibility report and EIS on Coyote and Berryessa released for public review	May 1, 1987

Public meeting on Draft EIS	June 25, 1987
Completion of joint feasibility report and EIS on Coyote and Berryessa	November 1987
Division review and approval	November 1987
Approval by the Board of Engineers for Rivers and Harbors	April 1988
Report to the Office of Chief of Engineers (OCE)	September 1988
Authorization for Construction (S 2100)	1988
OCE transmits report to Secretary of Army	January 1989
Draft GDM and Supplemental EIS	October 1990
Construction Funding by Congressional Appropriation	1991-1992
Prepare Plans and Specs	1991
Begin construction	1992

STATUS OF FUNDING

The 1988 Budget (continuing resolution) includes $150,000 to begin Preconstruction Engineering and Design on Coyote and Berryessa Creeks. The Administration's proposed budget for 1989 includes $800,000 for continued Preconstruction Engineering and Design.

RECOMMENDATION

Based upon the present high flood risk and potential damage from Coyote/Berryessa Creek, as well as the support which the Administration and Congress has given, and continues to give, to the Project, it is urgently requested that the Subcommittee on Water Resources, Transportation and Infrastructure include in its Water Resources Bill construction authorization for the Coyote/Berryessa Creek flood control project.

Statement of
The Associated General Contractors of America
Presented to the
Subcommittee on Water Resources, Transportation and Infrastructure
of the
Committee on Environment and Public Works
United States Senate
on the Subject of
Water Resources Development Act of 1988, S. 2100, S. 2101
March 25, 1988

AGC is:

- More than 32,500 firms including 8,000 of America's leading general contracting firms responsible for the employment of 3,500,000-plus employees;
- 104 chapters nationwide;
- More than 80% of America's contract construction of commercial buildings, highways, industrial and municipal-utilities facilities.

The Associated General Contractors of America represents more than 32,500 firms including 8,000 of America's leading construction companies. These general contractors employ more than 3,500,000 workers, and perform more than 80% of America's contract construction of commercial buildings, highways, industrial and municipal-utilities facilities.

The Associated General Contractors of America endorses prompt action on either version of the Water Resources Development Act of 1988, S. 2100 or S. 2101. Favorable action on water resources legislation is necessary this year in order to prevent the contention and controversy which accompanied the enactment of the Water Resources Development Act of 1986. The obstacles to enactment of this latter legislation were created, in large part, due to the low priority of not acting on water resources bills on a regular basis. This resulted in suspicion and skepticism over the evermounting cost of a new water bill created by the need for more water projects.

Federal water programs have enhanced entire multi-state regions by providing flood protection, water transportation and recreational opportunities. Historically, irrigation and hydropower projects have stimulated the regional economies, by providing incentives for business and agricultural capital investment.

National security is another crucial, though infrequently-mentioned, aspect of the nation's water resources. Navigable channels, electricity for production and adequate supplies of water are vital to the country's defense.

In the early 1800's, this nation's forward-thinking leadership recognized the necessity for taming uncontrolled river basins, which periodically threatened life and property, into useful and productive systems essential to manufacturing activity and economic growth. The nation has benefited. So have the states. The system has worked because federal leadership and coordination have made it work.

Prompt action by Congress on either of these bills will reaffirm the needed Congressional leadership in the area of water resources and will restore order and deliberateness in the consideration process for water resources bills. AGC commends Congress for taking the initial step toward bienniel consideration of water resources legislation.

AGC commends Congress on the fact that these bills do not attempt to undo the general policy on water resources issues which were established in the 1986 Act, but merely refines that general policy. AGC believes that, at this point in time, it is inappropriate and not in order for the Congress or anyone to propose any new initiative which deviates from that general policy or which may become the subject of controversy.

AGC, however, considers Section 205 of S. 2100 a new initiative, one that does not belong in authorizing legislation for water projects. Section 205 involves itself directly with a procurement issue. Procurement issues and the ability of the federal government to make the most cost effective purchases were addressed by the Competition in Contracting Act of 1984. AGC questions the need for the Senate Subcommittee on Water Resources Development, Transportation and Infrastructure to address procurement issues which were so recently addressed by Congress. AGC encourages the Subcommittee to delete this section from S. 2100.

AGC, once again, urges Congress' prompt consideration of water resources legislation.

STATEMENT
OF
WILLIAM H. DEMPSEY
PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS

ON

S. 2100 AND S. 2101 WATER RESOURCES DEVELOPMENT LEGISLATION

FOR RECORD OF HEARINGS BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES, TRANSPORTATION
AND INFRASTRUCTURE
SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

MARCH 16-18, 1988

My name is William H. Dempsey and I am President of the Association of American Railroads (AAR). The AAR represents America's Class I freight railroads.

I would like to submit for the record a statement from the freight railroad industry opposing the inland navigation projects included in S. 2100 and S. 2101--in particular the $750 million Locks and Dams 52 and 53 project.

America's freight railroads have a legitimate self-interest in public policy affecting inland navigation projects. Railroads compete vigorously with the nation's inland commercial barge lines for a substantial portion of freight traffic. To the extent inland navigation projects are financed by the general taxpayer, railroads--which must themselves build, operate, maintain, and pay taxes on their rail rights-of-way--suffer significant competitive disadvantages.

The general public is also hurt. When freight rates are not based upon the true costs of providing a service, rail shippers compete against rivals whose freight rates are government subsidized. Taxpayers are forced to share the cost of a publicly provided facility with its direct beneficiaries, inducing over-spending and over-building. Overall market signals are distorted and economic efficiency suffers as subsidies encourage the selection of high cost carriers, commodities, and projects.

Both fairness and economic efficiency, therefore, dictate a need for waterway user charges sufficient to fully recover government expenditures on waterways. The navigation related costs of new capital investment and the costs of operations and maintenance should be paid entirely by the barge operations that benefit from waterway expenditures.

There has been recent progress. The new cost-sharing procedures of the 1986 Act exercise some restraint over wasteful spending on waterways projects. But the waterway system is, unfortunately, still far from being self-financing. In fact, waterways remain the most heavily subsidized freight transportation mode in America. The root of the problem is the grossly inadequate level of waterway user charges. Even when user charges reach their 1995 level of 20 cents per gallon, they will never raise more than a small proportion of the annual Federal expenditures being made on behalf of commercial navigation interests.

In fact, that proportion is unlikely ever to rise above 20 percent of expenditures. Thus, waterway user charges covered only 6.3 percent of FY 1986 inland waterway spending (collections for the year were $42 million; expenditures on construction were $254 million; expenditures on operations and maintenance were $413 million). Assuming that expenditures remain flat (a reasonable assumption for operations and maintenance; construction spending is more volatile), 1995's doubled user charge will still leave the user financed share at 12.6 percent. Put another way, 1995 user charges will at best cover about 20 percent of operations and maintenance (twice the 1986 collections compared with assumed constant dollar operations and maintenance expenditures of $413 million). Any construction spending will lower the share paid.

So large a subsidy leaves the railroad industry with no choice but to oppose new investment in the waterway system until full cost recovery waterway user charges are enacted.

Conclusion

Although progress has been made toward a better waterway user charge system, tax levels are still inadequate. Waterways remain by far the most heavily subsidized of all transportation modes.

This subsidy puts railroads at a competitive disadvantage. It also distorts the overall transportation market, creating inefficiencies that harm the general public.

The solution is to enact full cost recovery user charges. Until such charges are imposed, the railroad industry must continue to oppose subsidized waterway projects.

STATEMENT
NATIONAL COAL ASSOCIATION
THE WATER RESOURCES DEVELOPMENT ACT OF 1988 (S. 2100 and S. 2101)

SUBCOMMITTEE ON WATER RESOURCES, TRANSPORTATION AND INFRASTRUCTURE
ENVIRONMENT AND PUBLIC WORKS COMMITTEE
U.S. SENATE
MARCH 16-18, 1988

SUMMARY

The National Coal Association respectfully wishes to express strong support for authorizing the replacement of Locks and Dams 52 and 53 on the Ohio River, as provided in the Water Resources Development Act of 1988 (S. 2100 and S. 2101). In doing so, NCA associates itself with the recommendation of the Inland Waterways Users Board, as the board reported to the Secretary of the Army and to Congress in its first annual report on December 22, 1987 with regard to this matter. NCA further supports the testimony of the Association for the Development of Inland Navigation in America's Ohio Valley (DINAMO) presented at these hearings.

NCA encourages the Congress to authorize the construction of a high-lift navigable dam with twin, 1,200-foot locks near Olmsted, Illinois to replace Locks and Dams 52 and 53, as recommended by the Assistant Secretary of the Army for Civil Works in a feasibility report sent to the Congress on October 26, 1987. The Ohio River Division of the U.S. Army Corps of Engineers proposes to continue preconstruction engineering and design of the Olmsted Locks and Dam project so that the general design memorandum will be completed in Fiscal Year 1989. The vital nature of the project dictates that all work leading to the start of actual construction should be expedited in order to begin construction activities at the Olmsted site early in 1989. That, of course, requires the project authorization which S.2100 and S.2101 provide.

NCA's reasons for urging that the Olmsted Locks and Dam project should be expedited are based: (1) on the fact that the obsolete structure at Locks and Dams 52 and 53 reduce the efficiency and safety of navigation on a critical portion of the Ohio River near its junction with the Mississippi River, and (2) on the increasingly higher volumes of river traffic projected at this location year-to-year through the year 2000. Coal is a major part of the traffic at this key location. In representing coal producers, consumers, exporters, and shippers, along with other organizations associated with the coal industry in the United states, NCA has firsthand knowledge and understanding of the need for improvement at several points on the Ohio River, particularly at the subject location.

The Olmsted Locks and Dam project represents a systematic, highly warranted step in the process of river navigational improvements, such as the Gallipolis Locks and Dam project authorized by the 1986 Water Resources Development Act, and now under construction upstream in the Ohio River Basin. NCA was a firm supporter of the 1986 Act, including its provisions on cost sharing of construction, as well as its authorization of critical projects. NCA continues to support the 1986 Act's establishment of cost sharing for construction; and believe it is appropriate to build further on that sound foundation.

THE OLMSTED PROJECT IS AN IMMEDIATE NEED TO ENABLE BULK COMMODITIES LIKE COAL, GRAIN, AND CHEMICALS TO BE COMPETITIVE

The Ohio River, joining the upper and lower portions of the Mississippi River, and linked with several other segments of the inland waterways system through its junctions with the Tennessee, Cumberland, Green, Kanawha, Monongahela, and other rivers, constitutes a lifeline for producers, consumers, exporters, and shippers of bulk commodities like coal, grain, and chemicals in a 14-state area within the Ohio River Basin. Coal is one of the major commodities carried on the inland waterways system. Today water carriers transport one out of every five tons of coal shipped from mines to utility and industrial plants and to ports on the Gulf Coast for at least part of its journey from mine to market. The Ohio River itself carried 98 million tons in 1985.

The U.S. Army Corps of Engineers reports that at Lock & Dam 52 on the Ohio River more than 41.3 million tons of coal moved in 1986, along with 10.0 million tons of grain, 10.0 million tons of chemicals, and 24.4 million tons of other commodities. Coal represented more than 48 percent of total river traffic, 85.7 million tons. By coal origin, 42 percent came from Kentucky, 21 percent from Illinois, 15 percent from West Virginia, 13 percent from Indiana, 5.5 percent from Ohio, 2.75 percent from Pennsylvania, and the remainder from other coal-producing states. Of the coal moving through Lock & Dam 52, 36 percent went to Louisiana, 11 percent to Florida, with the remainder to Kentucky, West Virginia, Illinois, Indiana, Ohio, Missouri, Mississippi, Alabama, Tennessee, as well as other states. Clearly, Lock & Dam 52 serves a significant number of states. The high volume to Louisiana and to Florida through Lock & Dam 52 illustrates both the attractiveness of river transportation for long-haul movements, and the value of the Ohio and Mississippi Rivers as a conduit to the Gulf Coast Region for U.S.

coal exports and for transshipment within the Gulf Coast Region from or to oceangoing vessels for domestic and foreign terminations.

The overall traffic density at Lock & Dam 52 has increased over 35 percent from 1982 to 1986 on a tonnage basis. In 1986, it handled more tows (9,097), more loaded barges (56,108) and more total barges loaded and empty (91,846) than any other lock and dam installation on the Ohio River. For lockage at Lock & Dam 52, tows experience an average of almost 6 hours of delay. Occasionally the delays are 20 to 30 hours or more. This precipitates serious losses. Towboats with loaded barges waiting for lockage can lose as much as $10,000 per day as a consequence of idled equipment, manpower, and cargo.

Lock & Dam 52 and 53 opened to traffic respectively in 1928 and 1929, 60 years ago. They have deteriorated severely, are undersized relative to modern tows which comprise the towboat and 15 jumbo barges, and are basically operated manually as contrasted to the state-of-the-art technology in river navigation and lockage procedures. In short, their useful life in relationship to efficient, safe operation and reasonable maintenance levels has been exceeded. The cure is clearly to replace Lock & Dam 52 and 53 with the proposed single high-lift, twin 1,200-foot locks and dam. Doing so with minimal delay is an important step in preserving the efficiency of the inland waterway system and will result in U.S. coal, grain, etc. being more competitive.

NCA FORECASTS SHOW STEADY GROWTH IN COAL PRODUCED IN THE U.S. FOR DOMESTIC CONSUMPTION AND EXPORT.

Today about one in every five tons of coal shipped from mines to utility and industrial plants in the U.S. or to ports along the Gulf of Mexico is carried in open hopper barge tows for part of the movement. NCA believes that share of total coal traffic handled on the inland waterways system will hold steady, and possibly increase from now through the year 2000. Coupled with the rise in coal production and consumption forecast by NCA through the year 2000, the inland waterways are expected to handle substantially higher tonnage of coal in the 1990s.

Total domestic consumption of coal, as reflected in the table on page 6, is forecast to grow from an annual level of 836 million tons in 1987 to nearly 1.1 billion tons by 2000, an increase of approximately 30 percent. Exports are forecast to rise from 79 million tons in 1987 to 102 million tons annually by 2000, a similar growth of about 30 percent. Over the same period , NCA forecasts annual coal production to increase from 917 million tons to nearly 1.2 billion tons, while imports rise to 5 million tons from the 2 million ton level last year.

NCA's coal production and consumption figures are similar to projections of the U.S. Army Corps of Engineers' Institute for Water Resources which estimates growth in coal traffic on the inland waterways from 147.1 million tons in 1985 to 207.5 million tons yearly by the year 2000 - an annual growth rate of 2.3 percent and an overall increase of more than 40 percent. As reflected on page 6, coal represented 27.5 percent of total traffic in 1985. Coal's share is expected to expand to 30.7 percent.

NATIONAL COAL ASSOCIATION
COAL TRENDS AND FORECASTS

Volumes In Millions Of Tons In Selected Years

		1985	1986	1987	1988	1995	2000
					(est.)	(forecast)	
Domestic Consumption							
Electric Utilities		694	685	718	715	821	924
Metallurgical		41	36	36	34	43	45
Industrial/Retail		83	83	82	82	99	110
Total Domestic		818	804	836	831	963	1079
EXPORTS							
Canada:	Steam	9	8	10	7	9	9
	Met	7	6	6	6	8	8
	Total	16	14	16	13	17	17
Overseas:							
	Steam	23	23	18	18	27	35
	Met	53	48	45	43	48	50
	Total	76	71	63	61	75	85
Total Exports:		92	86	79	74	92	102
PRODUCTION							
East		559	564	580	568	644	697
West		325	326	337	330	407	479
Total		884	890	917	898	1051	1176
IMPORTS		2	2	2	2	4	5

U.S. Inland Waterways Traffic
Projections (millions of tons)

	1985	1995	2000	Annual % Growth' 85-2000
Coal	147.1	192.0	207.5	2.3%
Petroleum Products	100.4	109.5	115.6	0.9%
Nonmetallic Mineral	75.6	79.5	81.5	0.5%
Farm Products	70.6	91.7	103.2	2.6%
Total Traffic	534.6	629.9	675.5	1.6%

Source: U.S. Army Corps of Engineers, Institute for Water Resources, Status of the Inland Waterways, Appendix A, September, 1987.

NEW RIVER TERMINAL IMPROVEMENTS AND ADVANCES IN CARRIER OPERATIONS SIGNAL CONTINUING ATTRACTION TO THE WATERWAYS.

The mid-1980s have produced marked advances in water carrier operations exemplified by the utilization of computer systems to schedule tows and match towboats and barges in the optimal manner so that equipment, manpower, and terminal facilities yield maximum productivity. Intercarrier competition and the availability of improved management and communications systems have made these positive advances necessary and feasible. This has inured to the benefit of waterways users and the public which ultimately bears the cost of bulk commodity transportation coupled with construction of new and improved river terminal facilities for linking other surface transportation systems with barge fleets. These advances have set the stage for completing the modernization of the inland waterway systems through replacement of obsolete locks and dams which constrain the efficiency and safety of inland waterway operations.

NCA has examined the needed improvements through the 1980s. Our analysis looked closely at the 1981 National Waterways Study (NWS); updates of the NWS periodically conducted by the Institute for Water Resources of the U.S. Army Corps of Engineers; testimony of the Assistant Secretary of the Army (Civil Works), the Chief of Engineers, and the Corps' division engineers; and the experience of NCA's members who utilize the inland waterway system. This analysis indicates the Congress must authorize new starts in critical river navigational projects with high priority for replacement of Locks and Dams 52 and 53.

National Rural Electric
Cooperative Association

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March 24, 1988

Honorable Quentin N. Burdick
Chairman, Committee on Environment
and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

In response to your request, this letter sets forth NRECA's comments on S. 2158, a Bill to amend Section 9 of Public Law 534, 78th Congress, second session, directing the Corps of Engineers to undertake measures to alleviate stream bank erosion as a maintenance measure, and apportion the cost among project purposes.

From our review of the situation, we are in agreement that there is evidence that the operation of the reservoirs and power plants of the five mainstream Missouri River dams is a primary cause of the present pattern of erosion of the stream banks. Therefore, we support the objective of the bill which provides for stream bank protection as a part of the necessary maintenance of the project. Also, we agree with assignment of the costs of stream bank protection consistent with the project purposes, recognizing that power will be paying up to 75 percent of such costs.

There is precedent for this in the reach of the Columbia River stream bank protection work carried out by the Bureau of Reclamation between Grand Coulee and Chief Joseph Dams. This work was first undertaken in 1980 and is being completed this year. The total cost of the stream bank stablization program of $63 million has been capitalized and is being paid from power revenues.

In sum, we support this bill (S. 2158) which will enable the Corps of Engineers to utilize maintenance funds for stream bank protection along the Missouri River between Fort Peck Dam, Montana, and Gavins Point Dam in South Dakota and Nebraska.

Please advise if we can be of further assistance in this important matter.

Sincerely yours,

Morgan Dubrow

Morgan D. Dubrow
Chief Engineer
Energy and Environmental
Policy Department

Statement of National Rural Electric Cooperative Association
Before
The Subcommittee on Water Resources,
Transportation and Infrastructure

The Senate Committee on Environment and Public Works

March 24, 1988

Mr. Chairman, my name is Morgan Dubrow, Chief Engineer of the National Rural Electric Cooperative Association (NRECA). NRECA is the national association of over 1000 rural cooperatives which supply central station electricity to some 25 million people in the rural areas of 46 states.

NRECA appreciates the opportunity to address the Subcommittee on the need for public participation in decisions made by the Corps of Engineers to alter the operation of existing reservoirs for purposes other than those set out in the authorizing legislation.

Power from federal dams is marketed by the five power marketing administrations in some 34 states, and there are 600 rural electric cooperatives which purchase federal power. Another 500 public power systems and 60 private utilities also purchase this power. In fact, the purchasers of federal power pay about three-fourths of the cost of these projects.

Firm power from the projects is sold to preference customers or federal agencies. Any substantive change in the operation of these projects which reduces the quality and amount of the salable power will materially affect the repayment of these projects and tend to increase the rates to our member systems.

Some recent examples of projects whose operations have been modified to accommodate recreation, water supply, fish and wildlife enhancement and other purposes are:

1. the federal projects of the Columbia Basin power systems, such as Grand Coulee, Chief Joseph, Bonneville, Snake River plants, etc. for fish protection and enhancement which sharply reduce the overall power capability;

2. the revised Garrison Irrigation Project in North Dakota for water supply, fish and wildlife enhancement and recreation;

3. Denison Dam-Lake Texoma for recreation, municipal and industrial water supply which reduce the power output. Fortunately, a provision was included in the Water Resource Development Act of 1986 to compensate the power users, calculated "the customers' actual replacement cost less the cost the customer would have paid the Southwestern Power Administration (SWPA)"; and

4. Harry S. Truman Project, Lake-of-the Ozarks, Missouri, a proposal to reduce this 160 MW hydro facility to provide dependable capacity of only 30 MW. We understand that this action could raise the SWPA rates by 7 percent. This matter is still under review. This is a prime example of the need for open discussions between the Corps of Engineers, the power users, and other parties at the outset.

5. Southeast Projects. Some two years ago, in 1986, the Corps of Engineers planned to modify the operations of several projects to provide a water supply during the drought. Initially, the Corps recommended an operating plan that would have adversely affected the dependable hydroelectric capacity. Fortunately, the Southeastern Power Administration and the power users were able to work out an operating plan with the Corps that provided the needed water supply and at the same time protected the power capability of the system.

These are some examples of the great need for a legal requirement for the Corps of Engineers to work with all affected parties before making substantive changes in the operational criteria for multple-purpose projects. The number of such projects is increasing. For this reason, the following resolution was unanimously adopted by our membership on February 10, 1988 at our 46th annual meeting in New Orleans, Louisiana.

Resolution

SUPPORT OF CORPS OF ENGINEERS DUE PROCESS LEGISLATION--The U.S. Army Corps of Engineers (Corps) operates many multi-purpose water projects, the power from which is sold through the federal power marketing agencies. The Corps is charged with operating these projects to meet congressionally authorized purposes, and power is a congressionally authorized purpose of many of these projects. The Corps has attempted to make or has actually made operational decisions with respect to these projects without congressional approval so as to change the benefit-to-cost ratios and repayment schedules, affect power output, modify existing contracts between consumer-owned power systems and federal power marketing agencies, and significantly increase rates to preference customers. The Corps has also frequently failed to provide notice and the opportunity for affected consumer-owned power systems to comment with respect to proposed operational changes, the effect of which is to significantly increase rates, reduce energy availability, and force utilization of alternative sources of energy, on the basis that its operational decisions are not subject to the Administrative Procedures Act.

> Consumer-owned electric systems that are customers of the federal power marketing agencies need access to the Corps' decision-making process to protect their congressionally authorized and contractually established rights to project output, and such access should improve the quality of the decisions and thus serve the overall public interest.
>
> We urge that Congress enact legislation to require the Corps to afford customers of the federal power marketing agencies and owners of hydroelectric generating facilities at Corps' dams, notice of proposed changes in project operation that would have an impact on power output and costs, as well as a meaningful opportunity to comment upon such changes.

Our resolution speaks for itself.

We want to make it clear that we fully recognize and wholeheartedly support the need at times to modify the operation of multiple-purpose projects for recreation, water supply, fish and wildlife enhancement and other purposes. However, in our view, any such changes should be worked out between all parties of interest, and particularly with the power marketing agencies and their customers that have contract arrangements. Therefore, we urge the Subcommittee and the Congress to enact legislation to have the Corps confer with all parties, especially the power users before changing the basic operating criteria for its dams and reservoirs.

We appreciate the opportunity to submit this testimony.

STATEMENT OF SOUTHEASTERN RESOURCES POWER COMMITTEE
BEFORE
THE SUBCOMMITTEE ON WATER RESOURCES, TRANSPORTATION AND INFRASTRUCTURE

THE SENATE COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
MARCH 30, 1988

Mr. Chairman, my name is F. F. Stacy, President of the Southeastern Power Resources Committee (SEPRC). The SEPRC is an association of electric generation and transmission cooperatives representing more than 125 distribution cooperatives in the states of Alabama, Mississippi, Georgia, Virginia, North and South Carolina. This statement intends to express our concern with the absence of public participation in decisions by the Corps of Engineers regarding the management and operation of federal hydroelectric projects.

Members of the SEPRC purchase hydroelectric power from Corps of Engineers projects through the Southeastern Power Administration (SEPA). Most of these projects were authorized for flood control, hydropower, and navigation. The hydroelectric power consumers are the major source of revenue to the Federal Treasury from these projects. Our ratepayers, the ultimate consumer, reimburse the Federal Treasury approximately $35 million per year for the electricity generated by these hydroelectric projects.

On several recent occasions, we have been faced with the prospect of major changes in project management and operation that would have significantly affected project power production with: no compensation for the loss of power, little or no notice to affected parties, and no opportunity to comment on the substance of any proposed change. So far, more by accident than by design, we have been able to participate in the process and make our views known. Ultimately, decisions were reached that balanced legitimate interests. But, this problem suggests the need for a more formalized process to review the steps taken by the Corps in reaching its decisions.

During the drought of 1986 in the Southeast, the Corps of Engineers, without input from power customers, began to explore an operational plan for the Georgia-Alabama system of projects that in the Corps' view would protect water supply interests, but at a high cost to power customers. The power customers became aware of this proposed plan only days before its scheduled implementation. We were forced to enter the decision-making process at the highest level to attain an accommodation that balanced competing demands in a more equitable manner to all.

This past November, we learned that the Corps of Engineers had decreased power generation in the Georgia-Alabama system of projects to conserve water for usage during the 1988 summer. This forced the Southeastern Power Administration to purchase $840,000 of more expensive replacement power from other utilities to fulfill their contract obligations to their power customers. While recent rainfall in the Southeast has caused the Corps to resume normal generation, we remain frustrated at our limited access to provide input to the Corps during their decision-making process.

We hope the Subcommittee will consider a legislative solution mandating the Corps of Engineers to accord the rights of participation to parties affected by its operational decisions during its consideration of pending water resources legislation.

Upper
Mississippi River
Basin Association
ILLINOIS, IOWA, MINNESOTA, MISSOURI, WISCONSIN

March 22, 1988

The Honorable Daniel P. Moynihan, Chairman
Water Resources, Transportation, and
  Infrastructure Subcommittee
Senate Committee on Environment and Public Works
SD 458 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Moynihan:

Enclosed is testimony of the Upper Mississippi River Basin Association on the Water Resources Development Act of 1988 currently under consideration by the Water Resources subcommittee. We would appreciate having the statement included in the hearing record of the March 16-18, 1988 hearings scheduled on this legislation.

The statement regards a specific issue relative to the implementation of the Upper Mississippi River System Environmental Management Program. Our Association is hopeful that the issue can be resolved by a simple amendment to P.L. 99-662 clarifying operation and maintenance responsibilities for enhancement projects on national refuge lands.

Thank you in advance for your consideration of this proposal.

Sincerely,

Holly Stoerker

Holly Stoerker
Executive Director

HS:mle
Enclosure

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Testimony of the
Upper Mississippi River Basin Association
on the
Water Resources Development Act of 1988

March 1988

The Upper Mississippi River Basin Association is the five state organization which serves as the primary regional forum for interagency coordination of the Upper Mississippi River System Environmental Management Program authorized by Section 1103 of the Water Resources Development Act of 1986 (P.L. 99-662). As such, the Association has been working closely with the Corps of Engineers and the U.S. Fish and Wildlife Service to implement the unique provisions of this Congressionally authorized program. The participating states have devoted significant effort to insure that the program meets all the requirements of the law including the provisions for cost-sharing of enhancement projects. However, there is one provision of the law which poses significant policy problems and will, if not remedied, severely handicap the states and federal agencies' collective ability to execute the program. The issue relates to the provisions regarding operation and maintenance responsibilities for enhancement projects located on national refuge lands.

Existing Legislative Requirements - One component of the Upper Mississippi River System Environmental Management Program is the construction of projects to rehabilitate and enhance fish and wildlife habitat areas. Cost-sharing for these projects is governed by Section 906(e) of the Water Resources Development Act of 1986. That section stipulates that when projects provide "national" benefits, when projects are designed to benefit threatened or endangered species, or when projects are located on lands managed as a national wildlife refuge, they shall be 100 percent federally funded. All other projects are to be cost shared with a 25 percent nonfederal contribution. In any case, operation, maintenance, and rehabilitation activities are to be funded with a 25 percent nonfederal share.

Implementation Issues - The states of the Upper Mississippi River Basin have no problem with the cost-sharing provisions governing first cost or construction costs of enhancement projects. Where projects are not located on refuge lands, the states support partnership financing and are prepared to contribute the prescribed nonfederal share of construction costs. Likewise, states are prepared to assume the required operation and maintenance costs for projects on non-refuge lands. In fact, in some instances, the state has agreed to assume full responsibility for O&M if the state already manages the lands pursuant to some other previous agreement. An example of such a situation is the Clarksville project, an enhancement project located on cooperative agreement lands which are managed by the State of Missouri. The State has agreed to assume all O&M costs for the Clarksville project.

While the states have cooperated fully with the requirements of Section 906(e) and have in some instances offered to exceed the nonfederal O&M requirements, the application of the O&M requirements in one type of specific situation is problematic. The requirement that nonfederal sponsors provide 25 percent of O&M costs does not distinguish between projects on national wildlife lands and projects on other types of lands.

The requirement that states provide funding for O&M of projects on federally owned refuge lands that are managed for national purposes raises serious policy questions. Those lands are the management responsibility of the U.S. Fish and Wildlife Service. The use of state funds for activities on lands for which the state has no authority nor statutory responsibility is of questionable propriety.

Problem Resolution - The member states of the Upper Mississippi River Basin believe that environmental enhancement projects on national refuge lands should not require a nonfederal contribution for the costs of operation, maintenance, and rehabilitation. This approach not only reflects the traditional and appropriate distinctions between state and federal authority, but would also appear consistent with the cost-sharing policy of Section 906(e) governing construction costs of such projects. In accordance with Section 906(e) enhancement projects are at full federal cost when "such activities are located on lands managed as a national wildlife refuge." It therefore seems inconsistent and inappropriate that those same projects should require nonfederal support for their operation and maintenance.

It is unclear whether this inconsistency in policy which produces an untenable situation for nonfederal sponsors was simply an oversight in the original formulation of Section 906(e). In any case, a minor adjustment to Section 906(e) would be appropriate.

The Upper Mississippi River Basin Association offers the following amendment for the Committee's consideration. The final sentence of Section 906(e) would be amended by inserting the underlined language as follows:

> "The nonfederal share of operation, maintenance, and rehabilitation of activities to enhance fish and wildlife resources shall be 25 percent, *except when such activities are located on lands managed as a national wildlife refuge.*"

Conclusion - The States of the Upper Mississippi River Basin believe that Section 906(e) of P.L. 99-662 should be amended to clarify operation and maintenance responsibilities for enhancement projects on national refuge lands. The language proposed by the Upper Mississippi River Basin Association would specify that projects on refuge lands would not require a nonfederal share of operation and maintenance. The proposed amendment would have no effect on the provisions of Section 906(e) regarding the allocation of construction costs or the allocation of O&M costs for projects on non-refuge lands. Furthermore it is the states' understanding that the federal partners in the Environmental Management Program, the Corps of Engineers and the U.S. Fish and Wildlife Service, would welcome legislative clarification and have no problems with the language proposed by the states.

The Upper Mississippi River Basin Association urges the Senate Environment and Public Works Committee to include the proposed amendment to Section 906(e) of P.L. 99-662 in the currently pending Water Resources Development Act of 1988. Should the Committee have any questions, the Association would be pleased to provide further background material on this issue.